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MY LORD,

WITH every sentiment of respect, and by your Lordship's kind permission, I dedicate to your Lordship this *vade mecum* of Quarter Sessions' Law; and I have the honour to be,

My Lord,

Your Lordship's obliged and faithful servant,

FREDERICK JAMES SMITH.

4, ESSEX COURT, TEMPLE,
November, 1882.

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PREFACE.

THE object of this “*vade mecum*” is to place before the justices at Quarter Sessions, and the profession practising in those courts, the law relating to the various matters which from time to time come before them in appellate cases.

The subjects are arranged alphabetically for the convenience of reference; and by the practitioner keeping the text *au courant* with contemporaneous authorities, by making a note of any new Act of Parliament passed or decision found, the work may prove a useful compendium of those subjects on which an appeal may be made to a Court of Quarter Sessions.

F. J. S.

ESSEX COURT, TEMPLE,
November, 1882.

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c. 50 (The Municipal Corporations Act, 1882)	Add.
c. 58 (The Divided Parishes and Poor Law Amendment Act, 1882)	Add.

ADDENDA.

Page 7, *For reference to* “*R. v. Allen*,” *read* “33 L. J. M. C. 98.”

„ 8, *Note*—5 & 6 Will. 4, c. 76, is repealed by the Municipal Act, 1882, 45 & 46 Vict. c. 50 ; and sec. 103 of the former Act, is re-enacted in sec. 163 of the Act, 1882 ; and sec. 105 of the former Act is re-enacted in sec. 165 of that of 1882.

„ 9, *Note*—6 & 7 Will. 4, c. 89, is repealed by the Municipal Act, 1882, and sec. 8 of the former Act is re-enacted in sec. 166 of the latter Act.

„ 13, *Note*—The jurisdiction of the county justices in boroughs is now defined by the Municipal Act, 1882, sec. 154. By sub-sec. (1), where the borough has not a separate court of quarter sessions, the county justices may exercise their jurisdiction therein as in the county. By sub-sec. 2, no part of a borough having a separate court of quarter sessions will be within their jurisdiction, exerciseable *out of* quarter sessions, *where the borough was exempt therefrom before the passing of the Municipal Act, 1835.*

„ 14, *to* 5 & 6 Will. 4, c. 76, s. 58, *note*—But see now the Municipal Act, 1882, s. 164 ; *n. (a)* *for* “*Bridg.*” *read* “*Bing.*”

„ 15, *Note*—*to* 5 & 6 Will. 4, c. 76, s. 105, repealed ; see *note, supra*, p. 8. In *note (a)*, *for* “58,” *read* “lviii. ;” *for* “104,” *read* “civ. ;” *for* “*Hereford*,” *read* “*Hertford*.”

„ 20, line 1, *for* “134,” *read* “124.”

„ 36, line 7, *dele* “*probandi*.”

„ 37, *to* “*Hodges v. Bennett*,” *add* “39 L. J. M. C. 224.”

„ 44, *to the* “*appeal*” clause, *add* “see *R. v. Montgomeryshire*, 51 L. J. M. C. 95.”

„ 46, *side-note*—*for* “15,” *read* “*to the*.” *Read third side-note*—“*On guardians’ order—right of appeal.*” In third paragraph, *read* “*statute, 36 Vict. c. 9, s. 5.*” In *last side-note* *for* “*appeal*,” *read* “*order*.”

„ 51, *Note*—6 & 7 Will. 4, c. 105, is repealed by the Municipal Act, 1882, 1st schedule. By sec. 248 of that Act the Cinque Ports justices will, after December 31, 1882, have jurisdiction to act in the granting of alehouse, &c., licences, within any of the corporate and non-corporate members and liberties of the five cinque ports, not being within a borough having a separate commission of the peace.

„ 52, line 1, *for* “1881,” *read* “1811 ;” line 8, *for* “61,” *read* “36.”

„ 53, line 13, *for* “*were*,” *read* “*have been*.”

„ 57, line 29, *for* “1826,” *read* “1828.”

„ 60, line 1, *for* “1829,” *read* “1869.”

- Page 62, last line, *for* "8," *read* "3."
- „ 69, *read* reference to "*R. v. Bolton*, 11 Q. B."
- „ 73, line 8, *to* "50 L. J. M. C.," *add* "95." Last line, *for* "319," *read* "519."
- „ 77, line 7, *for* "98," *read* "89."
- „ 86, sec. 6, *for* "1876," *read* "1874."
- „ 107, *Note* to 5 & 6 Will. 4, c. 76, s. 92—See the Municipal Act, 1882, s. 144.
- „ 115, *for* "Sullifant," *read* "Sillifant."
- „ 116, *to* "17 Geo. 2," *read* "c. 38."
- „ 143, *to* "Licensing Act, 1828," *read* "ss. 27-29;" *for* "*Bolton*," *read* "*Bolton*;" *to* "36 Geo. 2," *read* "c. 14."
- „ 153, line 13, *for* "38," L.J., *read* "31."
- „ 156, *read* "54 Geo. 3, c. 96."
- „ 169, line 13, *read* "*Morant v. Taylor*;" line 17, *read* "11 & 12 Vict. c. 43."
- „ 171, Borough Rate. *Note*—5 & 6 Will. 4, c. 76, s. 92, is repealed by The Municipal Act, 1882, and is re-enacted in sec. 144 of that Act. The appeal will be under sec. 144, sub-sec. (9), and the recorder is directed to finally determine the appeal by sub-sec. (10); the costs are at his discretion under sub-sec. (11).
- „ 184, *to* "*R. v. Kent*," *read* "L. R. 8 Q. B. 305."
- „ 189, last paragraph, *for* "647," *read* "64."
- „ 223, *for* "Berlow," *read* "Bierlow."
- „ 225, *to* third side-note *add* "evidence."
- „ 238, *for* "council," *read* "counsel." *To* "*R. v. Woodrow*," *read* "16 L. J. M. C. 122."
- „ 240, third side-note—*for* "Convictions," *read* "Dismissal on merits."
- „ 269, line 21, *read* "33 Hen. 8, c. 91."
- „ 321, last side-note—*to* "even if," *add* "no."
- „ 322, *for* "7," *read* "4 A. & E."
- „ 342, last paragraph, *read* 39 & 40 Vict. c. 61;—11 & 12 Vict. c. 110.
- „ 343, line 22, *to* "24 & 25," *add* "Vict."
- „ 344, line 28, *read* 16 & 17 Vict. c. 97.
- „ 374, *Note*—The appeal sec. against a borough rate is now sec. 144—The Municipal Act, 1882 (see *supra*, note to page 171).
- Note* to 4 & 5 Will. 4, c. 76, s. 127. The limit of time for the prosecution is now *six* months instead of three.—The Municipal Act, 1882, s. 219, sub-sec. (1).
- „ 375, *to* "appeals against convictions," *add* "But now the appeal will be under sec. 31. Sum. Juris. Act, 1879."
- „ 382, *Note* *to*, "As to the adjustment of the boundaries of parishes," *add* "see also The Divided Parishes Act, 1882, 45 & 46 Vict. c. 58, s. 2."
- „ 383, *for* "*R. v. Gloucestershire*," *read* "*R. v. Gloucester*."
- „ 439, last side-note—*for* "obligations," *read* "objections."
- „ 442, last paragraph, *read* 17 Geo. 2, c. 38, s. 4.
- „ 464, *for* "8 A. & E." *read* "2 A. & E."
- „ 517, Clause 3, *after* "And by sec. 10," *add* "as to."
- „ 521, *to* "*R. v. Sussex*," *read* "1 M. & S. 734."
- „ 538, *To* note (b), *add* *to* "5 & 6 Will. 4, c. 76, s. 102," "see now The Municipal Act, 1882, s. 159."

The following rules of practice are in force at the Kent Sessions. The first has reference to the entry and respiting appeals at those sessions, and is of

general application to all parties having appeals against orders of removal triable in Kent. The rule is dated October 20, 1859 :—

ORDERED,—

THAT the practice of entering and respiting appeals against orders of removal upon motion as of course at the sessions next after the service of the order of removal, be discontinued, and that the practice in future be as follows :—

That as a general rule, appeals against orders of removal shall not be allowed to be entered and respited upon an application *ex parte* the appellant, without the consent of the respondent, in cases where the notice of appeal shall have been given twenty-one days before the sessions; but in case such notice shall have been given within the period of twenty-one days, that the appellant shall be allowed to enter and respite such appeal on a motion as of course, and that in case the said period of twenty-one days shall have intervened between the service of the notice and the sessions, and the appellant shall intend to apply to the court for leave to enter and respite the appeal, the appellant shall give notice to the respondent of such intention and the grounds thereof, and the court will thereupon take into consideration any special grounds which may be shown why the court should allow the appeal to be entered and respited, and upon what terms as to payment of costs to the respondent or otherwise.

The second series of rules regulate the proceedings to be observed on the confirmation of new licences under the Licensing Acts; and for the declaring a district to be a populous place.

RULES.

THE following rules, made by the court of quarter sessions of the peace for the county of Kent, are in force in East and West Kent.

The clerks to the licensing justices of the county shall transmit forthwith to the clerk of the peace every new licence or order for removal of a licence granted by the licensing justices requiring confirmation, together with any documents left with them that have been used in support of the application for such licence or order.

Any person who, having opposed the original grant of a licence, intends to oppose its confirmation, shall, within seven days after such grant, give notice in writing to the applicant and to the clerk of the peace of his intention to oppose, and shall state in such notice the grounds of his opposition.

Every applicant for confirmation of a licence shall appear in person before the said court of confirmation, unless his absence be excused by such court on good grounds.

The proceedings of the county licensing committees shall be regulated according to the practice of the court of quarter sessions, except that solicitors, appearing for their own clients only, shall be heard before such committees; but no solicitor shall appear under instructions from another solicitor.

A county licensing committee shall not, without good reason proved to their satisfaction, hear any person on the merits of an application for an order to declare any district to be a populous

place or part of a town, unless such person shall, three weeks at least before the hearing, have given notice in writing to the clerk of the peace of his intention to make such application, and shall have deposited with the clerk of the peace, for the use of the committee, a copy of the ordnance map on a scale of 25·344 inches to the mile (where it exists), with a line drawn upon such map showing the exact boundary of the proposed populous place or part of a town.

Every person who intends to apply to a county licensing committee for an order under "The Licensing Act, 1874," to declare a district to be a populous place or part of a town, shall, at least three weeks before the hearing of such application, advertise his intended application in some newspaper usually circulating in such district, and shall also give three weeks notice in writing of such intended application to the superintendent of the county police acting in the said district, and to one of the overseers of the poor of the parish which comprises the whole or the larger part of the said intended district; and also within twenty-eight days before such hearing cause a like notice to be affixed and maintained between the hours of 10 A.M. and 5 P.M. of two consecutive Sundays, on the principal door or one of the doors of the church of such parish, or, if there be no such church, on some other public and conspicuous place within such parish.

F. RUSSELL,

Clerk of the Peace for Kent.

SESSIONS HOUSE, MAIDSTONE.

17th August, 1882.

A

QUARTER SESSIONS VADE MECUM

IN APPELLATE AND CIVIL CASES.

PART I.

THE CONSTITUTION OF THE
COURT.

THE GENERAL JURISDICTION.

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The Constitution of the Court of Quarter Sessions.

THE Court of Quarter Sessions has all the rights and privileges of a court of record. It is holden before at least two justices of the peace, of whom one was formerly required to be of "the quorum," but, in the present day, *all* the justices are, by their commissions, included in the quorum clause; and the court will be legally constituted by the presence of *any* two justices qualified to act within the limit of its jurisdiction (*a*). See *R. v. Llangiare*, 4 B. & S. 249; 32 L. J. M. C. 225. The court will meet within the limits of its jurisdiction as appointed by the commission of the justices, and the statutes referred to in their charge. *Lambert, Eirenarcha*, 378 (1610); *Dalton*, 13, 511 (1697); 2 Hawk. P. C. 18; *R. v. Worcester JJ.*, 2 B. & A. 228.

In Middlesex the Court of Sessions is specially constituted under 7 & 8 Vict. c. 71; 14 & 15 Vict. c. 55; 22 & 23 Vict. c. 4; 24 & 25 Vict. c. 101, and may be

(*a*) The jurisdiction must appear on the face of each record; the minutes made by the Clerk

of the Peace will not be sufficient: *R. v. Smith*, 8 B. & C. 341.

held before the assistant judge alone ; but whenever any other justice is present the assistant judge is only *as one* of the court, and, although still the presiding judge, has only a joint jurisdiction with his fellow justices. *R. v. Middlesex J.J. ; in re Slade*, 2 Q. B. D. 516 ; 46 L. J. M. C. 225 ; 36 L. T. 402.

Cities and boroughs having a separate court of quarter sessions, have as the sole presiding judge, the recorder, under appointment by the Crown, and not as, prior to the Corporation Reform Act, by the corporation. See 5 & 6 Will. 4, c. 76, s. 105. Before the Corporation Reform Act the Recorder was merely the legal assessor of the court, the courts being composed (in most cases) of the mayor, the recorder, the ex-mayor, and senior alderman. In London, at the present time, the Lord Mayor and the Court of Aldermen are members of and preside at the Central Criminal Court, which is founded on the ancient City Sessions Court.

The commissions of the peace date from as early as Edward I.'s reign (1226-1330)—a sovereign, who, from his many improvements in the law, was styled the English Justinian, and of whose laws Sir E. Coke speaks as being "more constant, standing, and durable, than any made since" (Institute, 156) ; "so that," Sir Matthew Hale remarks, "the mark or epocha we are to take for the true starting of the law of England, what it is, is to be considered, stated and estimated, from what it was when King Edward left it." (Hale, His. Com. Law, 158, 163.) Prior to the Stat. of Edw. there were no justices of the peace within the realm, but only conservators of the peace. Dalton, 6, 20 (1697).

The 1 Edw. 3, c. 16 was passed for the better keeping and maintaining of the peace, and for the appointment in every county of "good and lawful men that were no maintainers of evil or barrators to keep the peace." In 4 Edw. 3, c. 2, and 18 Edw. 3, St. 2, c. 2, further powers were given to the justices, but their commissions were confined to the bare keeping of the peace. Lambert, Eirenarcha, 20-23 ; the general standing authority "to *hear and determine*" was not given until A.D. 1360, 34 Edw. 3, c. 1, an Act entitled "what sort of persons shall be justices of the peace, and what authority they shall have." They were then first commonly reported as "justices of the peace," and made, as Lord Holt said, "complete judges." See *Harcourt v Fox*, 1 Show. 528 ; 2 Finlason's Reeve's

His. Eng. Law, 329-331; also, 36 Edw. 3, St. 1, c. 12, when it was enacted, "that in every county there should be assigned for the keeping of the peace a lord, and with him three or four of the most worthy in the county, *with some learned in the law.*"

By 18 Edw. 3, c. 2, 34 Edw. 3, c. 1, and 17 Rich. 2, c. 10, two lawyers (at least) were assigned in every county to hear and determine felonies and trespasses done against the peace. Dalton (9 ed. 1697).

In the twentieth year of King Edw. 3rd, the Commons had prayed that they might have the power to hear and determine felonies, when it was answered that the king would appoint learned persons for that office. Parl. Pet. 20 Edw. 3, c. 29; 2 Fin. Reeve's His. Eng. Law, 330.

The Stat. 1 Edw. 4, c. 2, took away from the Tourn, the ancient criminal court of the Saxons, the power to "hear and determine," and transferred it to the quarter sessions: and "thus did the quarter sessions arise in consequence upon the destruction of the Tourn." 3 Fin. Reeve's His. Eng. Law, 6-11.

The form of the commission to the justices was settled by conference of the judges in M. T. 1590, in nearly the form at present in use. The second *assignavimus* runs: "Vos et quoslibet duos vel plures vestrum quorum aliquem," &c. See Lambert's Eirenarcha (1610 ed.), p. 378; (1602 ed.), p. 364; Dalton, Office of Justice (1679 ed.), p. 16-18. See also, as to the Trailsbaston, and first commissioners of oyer and terminer, 2 Fin. Reeve's His. Eng. Law, 169, 304, 328.

As to the present appointment of a justice of the peace for counties, see 34 Vict. c. 18, repealing 6 & 7 Vict. c. 73, s. 3, and 5 Geo. 2, c. 18, s. 2, which disqualified practising attornies, solicitors, and proctors, from being justices. And as to the pecuniary qualifications, see 38 & 39 Vict. c. 54, ss. 1, 2.

Formerly, under 12 Rich. 2, c. 10, the justices received "*wages*" of four shillings a day for attending sessions; by 14 Rich. 2, c. 12, no duke, earl, baron, or baumeret, was entitled to "*wages*." These "*wages*" continued up to 18 & 19 Vict. c. 126, when they were (s. 21) abolished, and 12 Rich. 2, c. 10, 14 Rich. 2, c. 12, or any Acts in force authorising such payments, were so far repealed.

By 26 & 27 Vict. c. 97, the Local Board of any city or place (not being a municipal corporation), wherein the

Public Health Act, Local Government Act, or Local Improvement Act is in operation, and comprising a population of 25,000 persons, but not included in any district for which a stipendiary magistrate is acting, may (sec. 3) by a majority of two-thirds of the number of the Local Board thinking it expedient that a stipendiary magistrate should be appointed to act within such locality by a bye-law, fix the salary which such magistrate shall receive (subject to the approval of a secretary of state), and thereupon on the transmission of such bye-law to the Secretary of State, he may appoint a barrister-at-law, of not less than five years' standing, as such magistrate (*a*).

By sec. 5, the stipendiary magistrate so appointed, although not qualified by estate, and not disqualified by law to act as a justice of the peace for any other cause, may sit and act as a justice of the peace within his jurisdiction on all matters where one or more justices either alone or together could act. But no such magistrate can act as a justice of the peace at any court of gaol delivery, or general or quarter sessions, or in the making of any county rate or rate, in the nature of a county rate. But by the Licensing Act, 1872 (35 & 36 Vict. c. 94, sec. 39), beyond the limits of the metropolitan police courts jurisdiction, a metropolitan police or stipendiary magistrate may act as one of the justices empowered to grant or confirm licences so far as regards any licensing district, wholly or partly within his jurisdiction. The metropolitan magistrates are justices in the several counties into which their jurisdiction extends, but have only their special jurisdiction to act alone when acting within the area of the metropolitan district.

The General Jurisdiction of the Court.

The Court of Quarter Sessions has two divisions of juridical jurisdiction: it is a court of appeal on orders and convictions made by justices acting in special or petty sessions; and it also has an extensive jurisdiction as a court of oyer and terminer in criminal cases.

The court has also jurisdiction over the local government of the county, as "The County Authority." See 41 & 42 Vict. c. 77, s. 38.

(*a*) On each vacancy occurring a new bye-law is requisite.

As regards the criminal jurisdiction of the quarter sessions, see 5 & 6 Vict. c. 38, s. 1, defining what shall *not* be within its jurisdiction.

The Members of the Court.—The Justices.

All the justices holding a commission of the peace in the county (*a*); the recorder, or his deputy, in a borough; or in Middlesex (*b*), the assistant judge alone, or such judge with any of the county justices, or a quorum of justices—constitute the members of the respective courts of quarter sessions.

There must be excepted, however, from this general statement such justices as may have a personal interest in the matter to be inquired into by the court; and in such case the mere presence (*R. v. Suffolk*, 18 Q. B. 416; 21 L. J. M. C. 169) of the interested justice on the bench with the other justices, although he may take no part in the decision, would vitiate the whole proceeding: 16 Geo. II. c. 18, s. 3; *R. v. Cheltenham Commissioners*, 1 Q. B. 475; *R. v. Herts*, 6 Q. B. 753; *R. v. Great Yarmouth JJ.*, 51 L. J. M. C. 39; 8 Q. B. D. 525. The extent of the interest is immaterial when pecuniary. *R. v. Rand*, L. R. 1 Q. B. 220; 35 L. J. M. C. 157; *Wakefield L. B. H. v. W. R. & Grimsby Railway*, L. R. 1 Q. B. 84; 35 L. J. M. C. 69; *R. v. Cambridge Recorder*, 2 E. & B. 607; 27 L. J. M. C. 160; *R. v. Yarpole*, 4 T. R. 71; *R. v. Myers*, 1 Q. B. D. 173; 34 L. T. 247; *R. v. The Dean of Rochester*, 20 L. J. Q. B. 467; 17 Q. B. 1.

Lord Campbell, in *R. v. Suffolk (sup.)* strongly censured the conduct of a justice who remained on the bench when an appeal was being heard against a rate in which he was interested as a ratepayer; and remarked that, "if the justice had done his duty, he would at once have voluntarily withdrawn from the court." See also *R. v. Herts (sup.)*.

By the Union Assessment Act, 1864, 27 & 28 Vict. c. 39, s. 6, a justice is not disqualified from acting on an appeal against a *poor rate* in which he may be interested. This

(*a*) A Sheriff cannot act as a justice during his year of office in financial matters, county business, or criminal questions: *Exp. Colville*, 1 Q. B. D. 133; 45 L. J.

M. C. 108.

(*b*) See *R. v. Middlesex JJ.*, 2 Q. B. D. 516; 46 L. J. M. C. 225; 36 L. T. 402.

provision does not, however, apply to an appeal against the Valuation List, under 25 & 26 Vict. c. 103, s. 32. As to a waiver of the objection, see *The Wakefield L. B. H. v. The W. R. & Grimsby Railway (sup.)*.

So, of course, justices against whose decision an appeal is made, cannot be members of the court.

Where, however, a justice is a member of a public board, or of a local authority, although liable, in common with others, to contribute to, or be benefited by, the local fund, he may still form one of the court. See *R. v. Millidge*, 4 Q. B. D. 332; 48 L. J. M. C. 139; 40 L. T. 748. Where justices were members of a town council, and had as such taken part in making an order under the Dogs Act, 1871, 34 & 35 Vict. c. 56, they were held to be not disqualified from acting as justices on a summons under the order, on the ground of the interest they had taken in promoting the order. *R. v. Huntingdon JJ.*, 4 Q. B. D. 522.

The fact of a justice having made an affidavit in an action, expressing an opinion in favour of one view, which was to some extent involved in the contest under the summons, was held not to be sufficient to oust the jurisdiction of the justice to hear the summons. *R. v. Alcock, Chilton, Ex p.*, 37 L. T. 829, Q. B. D.

But if he be himself a litigant before the court, and sit amongst the justices, the proceedings will be void, although he take no part in them, and has not signed the conviction: *R. v. Myers*, 1 Q. B. D. 173; 34 L. T. 247; 24 W. R. 392; or should he be a litigant in a similar matter. *R. v. Great Yarmouth JJ.*, 8 Q. B. D. 525; 51 L. J. M. C. 39.

Where a member of a local authority authorising a prosecution is also a justice of the peace, such justice cannot assist at the hearing of the summons, as he would be practically hearing a prosecution in which he was also the prosecutor, and have such an interest as might lead to a bias in the matter. *R. v. Millidge*, 4 Q. B. D. 332; 48 L. J. M. C. 139; 40 L. T. 748.

In the case of a charge made against a clerk of the peace for misbehaviour in his office at the instance of the justices, the justices in general sessions were held by Willes, J., and the Court of Common Pleas, not disqualified from adjudicating on the charge, although they were both prosecutors and judges; *R. v. Russell*, L. R. 1 C. P. 740. That would be probably the only instance in which such a decision could be made.

Under the Highway Act, 1862 (25 & 26 Vict. c. 61), s. 38, no justice of the peace can act as such in any matter in which *he had acted* as a member of the board whose decision was appealed against. But by the Highway Act, 1864 (27 & 28 Vict. c. 101), s. 46, a justice is *not* disabled from acting *as such* in any matter in which the board may be concerned, merely on the ground that he is *by virtue* of his office a member of the board, or has acted *as such* at any meeting of the board. By sec. 9 (Act 1862) the justice, to be qualified to act as an *ex officio* member of the board, must *reside* in the highway district; the having a place of business only in the district will not qualify him as "residing." The justice might, when not "residing" within the district, be *elected* as an ordinary member of the board; in such case he would be excluded from acting in any judicial matter affecting the interest of the board under the above sections. A sheriff, although residing in the district, cannot be an *ex officio* member of the board, he being disqualified to act as a justice by 1 Mary, Stat. 2, c. 3, s. 8.

Under the Salmon Fishery Act, 1865 (28 & 29 Vict. c. 121, s. 61, a justice is not disqualified as such, by reason of his being a member of, or a subscriber to, the fishery board, unless the offence, the subject of appeal, was committed on his own land: prior to that Act he was disqualified. *R. v. Allen*, 4 B. & S. 915; 33 L. J. M. C. 243. (See the Salmon Fishery Act, 1861.) The liability to the payment of gas rent, or other gas charge, will not disqualify him from acting under the Gas Works Act, 1871 (34 & 35 Vict. c. 41, s. 46). And as to the disqualification of a justice under the Intoxicating Liquors Licensing Acts, see 35 & 36 Vict. c. 94, s. 60; but by sub-sec. 1 (s. 60), to create the disqualification, he must have vested in him a *beneficial* interest in the premises to be licensed; a mere legal interest will not disqualify him.

A justice, being an *ex officio* guardian, is not disqualified from adjudicating in a matter in which the guardians are interested, 5 & 6 Vict. c. 57, s. 15; so also in the case of a trial of an offence arising under an Act to be put in execution by a municipal corporation or local board of health (see *supra*), or improvement commissioners or trustees, or any other local authority, by reason only of his being as one of several ratepayers, or as one of any other class of persons, liable in common with the others, to contribute to or to be benefited by, any fund to the amount of which the penalty payable in respect of such offence is directed to be carried.

and in diminution of which such penalty will go. 30 & 31 Vict. c. 115, s. 2.

In any case where the justice is the complaining party, or the one instituting the proceedings at the board, he cannot act as a member of the court. *R. v. Weymouth*, 48 L. J. M. C. 139.

Where the justice has acted as a member of a highway board: see the Highway Acts, 1862, s. 38; Act, 1864, s. 46; *R. v. Cumberland*, 42 J. P. 361.

Where an order of Quarter Sessions has been made, and any justices have composed the court who were disqualified by interest, the order, on removal by *certiorari*, will be quashed. *R. v. Suffolk*, 21 L. J. M. C. 169; 18 Q. B. 416; *R. v. Hopkins*, E. B. & E. 100; *R. v. Allen*, 4 B. & S. 915; 33 L. J. M. C. 98; *R. v. Millidge*, 4 Q. B. D. 332; 48 L. J. M. C. 139; 40 L. T. 748.

The Recorder and his Court.

The Recorder of a borough having received his appointment from the Crown under the Municipal Corporation Act, 1835 (5 & 6 Will. 4, c. 76), s. 103, is to hold once in every quarter of a year, or at more frequent times if he thinks fit, or the Crown may direct, a quarter sessions of the peace in and for such borough; and of which court he will "sit as the sole judge" (*ib.* sec. 105). Such court will be a court of record, and the recorder will have cognizance of "all crimes, offences, and matters whatsoever cognizable by any Court of Quarter Sessions of the Peace for counties in England;" and "have power to do all things necessary for exercising such jurisdiction, notwithstanding his being such sole judge, as fully as the last-mentioned court."

The section provides as the only exceptions to this jurisdiction that "no recorder, by virtue of his office, shall have power to make or levy any county rate, or to grant any licence or authority to any person to keep an inn, alehouse, or victualling house, to sell exciseable liquors by retail; or to exercise any of the powers vested in the council of the borough"(a).

(a) Section 107 abolished all capital jurisdiction which some of the old cities had by their charters. Probably the last instance of a prisoner being under a capital charge at a borough court

was in 1815, of which a record appears in the case *R. v. Thomas*, 4 M. & S. 442, where the indictment found at the Rochester Sessions was removed into the K. B. by *certiorari* and tried on

In the absence of the recorder, or his deputy, the mayor may open and adjourn the Court of Sessions. (S. 106.)

In case of sickness or unavoidable absence, the recorder, under his hand and seal, may appoint a deputy recorder, being a barrister of five years' standing, to act for him at the quarter sessions *then next* ensuing and not longer or otherwise. But such sessions will not be deemed illegally held by reason of the recorder's absence not being deemed "unavoidable." 6 & 7 Vict. c. 89, s. 8.

This power to appoint a deputy is extended to recorders who are judges of local courts of record, and upon such an appointment notice thereof is to be sent to the Home Department with the reason why such appointment had become necessary: 32 & 33 Vict. c. 23, s. 1. See also 35 & 36 Vict. c. 86, s. 7, giving the power to a judge of any local court of record to appoint a deputy, being a barrister of seven years' standing; but this will not interfere with the previous statute. 32 & 33 Vict. c. 23, s. 1.

Much discussion has from time to time taken place on the extent of the recorder's jurisdiction under the Municipal Corporation Act (1835), s. 105.

The first case in which the question of jurisdiction arose was, *R. v. Gloucestershire JJ.*, 4 A. & E. 689. In that case an order of two justices of the County of Gloucester had been made under the provisions of the Highway Act, 55 Geo. 3, c. 68, s. 2, to stop up a highway alleged to be in that county: the preliminaries having been complied with, it was required "that such order, at the quarter sessions which shall be held *within the limit* where the highway, &c., so diverted, &c., *shall lie*, next after the expiration of, &c., be *returned to the Clerk of the Peace in open court*, and lodged with him; and such order shall at *such* quarter sessions be confirmed, and by *the* Clerk of the Peace enrolled amongst the records of the *said* Court of Quarter Sessions."

No appeal had been instituted under the writ of *ad quod damnum* under sect. 3 of 55 Geo. 3, c. 68, which was requisite for the foundation of an appeal at that time; and, therefore, under the 4th sect. it became imperative on the court

the Civil side at the Assizes at Maidstone. The indictment was tried before Bayley, J. The prisoner was found guilty subject to a point reserved. From a MS. note to *R. v. Thomas* in

the library at the Crown office, it appears that the point reserved was never argued, and the prisoner received a free pardon.

of the "Limit" having jurisdiction in the matter, to confirm the order of the justices (*a*).

The proceedings in that case had all taken place subsequently to the 9th September, 1835, on which day the 5 & 6 Will. 4, c. 76 (the Corporation Reform Act) became law. And it may here be noticed that the Highway Act of the same sessions (1835), although it had previously (30th August) received the Royal assent, was not to come into force until the 20th March following; so that, for the six months after the passing the Corporation Reform Act, the Highway Acts, 13 Geo. 3, c. 78, and 55 Geo. 3, c. 68, remained in force before they became repealed by efflux of time, and the coming into operation of the Highway Act, 1835.

The highway in question was situate in the parish of Clifton, which, before the Corporation Reform Act, was within the county of Gloucester; but by the Parliamentary Boundary Act, 2 & 3 Will. 4, c. 64, s. 35, sch. (O) 30, Clifton was included within the limits of the County and City of Bristol; and was by sect. 7 of the Corporation Reform Act included within its *municipal* boundary.

By sect. 8, 5 & 6 Will. 4, ch. 76, every place and precinct which were included within the metes and bounds of any borough or boroughs which were counties of themselves, as provided by the Act, and none other, formed part of such borough (*b*).

Upon an application being made to the Quarter Sessions for the County of Gloucester to enrol and confirm the order of the justices of the county, the court declined to do so, on the ground that their jurisdiction had been taken away and transferred to the Recorder of Bristol, under the Municipal Reform Act, within the limits of whose jurisdiction the highway lay.

On discharging a rule for a mandamus to the Gloucestershire justices to enrol the order, Lord Denman, C. J., said: "We find the transfer of jurisdiction by the 7th and 8th sections to be as complete as words can make it. We are, therefore, of opinion that Clifton is now part of Bristol, and not of the county of Gloucester."

No question was made in the case on the fact that Bristol

(*a*) In effect the same as section 91 of the Highway Act, 1835.

(*b*) See *The Mayor of Dorchester v. Enson*, L. R. 4 Ex. 335,

in which it was held that an ancient borough market might be held within such limits although outside the old limits of the municipal borough.

was a county as well as a city. Under 55 Geo. 3, c. 68, the order of the justices was to be enrolled at the sessions "of the *limit*" wherein the highway to be stopped up, &c., might lie, and no distinction was drawn, or could have arisen, on the fact of Bristol being a county of itself, the term "*limit*" being the sole definition given of the jurisdiction in the Highway Acts of Geo. 3. The like term, and with the same application, is used in the Highway Act, 1835. See further on this point, *infra*, tit. "Highways."

A somewhat similar point was considered in *R. v. Hull (Recorder)*, 8 A. & E. 63, under the Weights and Measures Act, 1835, 5 & 6 Will. 4, c. 63, which was passed on the same day as the Municipal Act, and which, unlike the Highway Act, came into force at the *same* time. Hull was a town and county; but, prior to May 1836, had no grant of quarter sessions or a recorder. The justices for the borough under sect. 17 of the Weights and Measures Act (*a*) had appointed one Oglesby inspector of weights and measures, and directed him under sect. 25 to account for his fees to the treasurer of the borough. In consequence of a doubt being entertained, after the grant of the Court of Quarter Sessions whether the Town Council or the recorder had jurisdiction to order the borough treasurer to pay Oglesby's salary, Oglesby applied to the recorder for such an order, and on his declining to do so, a mandamus was moved for. On making the rule absolute, Lord Denman, C. J., said: "The effect of the sects., 101, 105, and 107 of stat. 5 & 6 Will. 4, c. 76, is that the Court of Quarter Sessions in boroughs where there is a recorder consists solely of the recorder. The cases in which he is not to act are specified: *all other matters* cognizable by a court of quarter sessions are within his jurisdiction. The authority, therefore, of the magistrates assembled in quarter sessions *is merged* in that of the recorder, except in the cases specified in the proviso of sect. 105."

R. v. St. Lawrence, Ludlow, 11 A. & E. 170, again questioned the recorder's jurisdiction. In that case there was an appeal against an order of the borough justices of Ludlow to the overseers of the City of Hereford to pay to the overseers of St. Lawrence, Ludlow, the expenses of removing a pauper lunatic, under 9 Geo. 4, c. 45, s. 38, to an asylum. The question was whether or not the recorder of Ludlow

(a) This Act is repealed and weights and measures now rest all matters relating to the with the Town Council.

had jurisdiction to hear the appeal. Lord Denman, C. J., in giving the judgment of the Court, said : " The appeal is given by the 46th section of the Act, and is to be to the quarter sessions to be holden in *the county* where the matter of appeal shall have arisen. The 61st section of the Act provides that the word 'county' shall be deemed to include any town corporate. Now the matter of appeal here was the order made by two justices in the borough of Ludlow ; therefore, reading the word 'county' as 'town corporate,' it seems that the appeal is given to the borough sessions. *But whether this would or would not be the case* if the old corporation had continued, we have no doubt that it is so as the law now stands."

And then his lordship added these important remarks :— " The powers of the recorder as a court of quarter sessions, are enacted by the 105th sec. of 5 & 6 Will. 4, c. 76, and give him cognizance of 'all matters whatsoever cognizable by any court of quarter sessions of the peace for counties in England,' among which unquestionably the present matter is one."

We now come to four cases, in 1841, attacking the recorder's jurisdiction—

<i>R. v. St. Edmund's, Salisbury,</i>	2 Q. B. 71 ;	
<i>R. v. Suffolk JJ.,</i>		} 2 Q. B. 85.
<i>R. v. Shropshire JJ.,</i>		
<i>R. v. Lancashire JJ.,</i>		

These cases are also reported in 10 L. J. M. C. 138. These cases arose on appeals under 8 & 9 Will. 3, c. 30, s. 6, directing appeals against orders of removal of poor persons to be heard "at the sessions for the county, *and not elsewhere.*"

Lord Denman, C.J., in giving judgment, said : — " The Municipal Act gives to the city sessions *all* the jurisdiction, and to the recorder all the power, that formerly belonged, not to the quarter sessions of a town corporate, but to *any* county quarter session. These words give the recorder the trial of all matters that could be tried at the county sessions : the words, '*and not elsewhere,*' in the statute of Will. 3, being contrary, are abrogated ; '*Leges posteriores priores contrarias abrogant (a).*' "

(a) In dealing with the intentions of the Legislature, Lord Denman remarked—p. 94, 2. Q.

B.—" The Parliament in William the Third's time may be supposed to address the borough justices of

In *R. v. Deane*, 2 Q. B. 96 ; *R. v. Cockburn (a)*, Recorder of Bristol, 4 E. & B. 265, S. C. eo nom. *R. v. Bristol* (Recorder), 24 L. J. M. C. 43, it was held that the recorder has no jurisdiction to hear an appeal against a refusal to grant an ale-house licence, which would be the same as granting a licence.

In *R. v. Deane*, some reliance having been put upon sec. 111 of the Municipal Act, Pattison, J., remarked, that by that section "certain powers were there limited to such boroughs as had a grant of quarter sessions; but as the non-intromittant clauses still remained in the charters of some boroughs *which had not such grant*, it was necessary that a power should be given to the county justices to act in *such* boroughs. This was done by the 111th section, the effect of which was, that where there was *no grant of the quarter sessions*, the justices of the county should have jurisdiction, although the borough charter might contain the non-intromittant clause. I do not know," added his lordship, "what was the object of the latter part of the section; perhaps it may have reference to *newly added portions* of the borough; but I think it applies only to the jurisdiction of justices out of sessions." His lordship had previously said (*ib.* p. 91), in *R. v. Lancashire*, "I think that sec. 111 relates to the original jurisdiction of the justices, the jurisdiction of the borough sessions being regulated by sec. 105." See also as to sec. 111, *R. v. Bridgewater*, 10 A. & E. 711.

the peace; 'we cannot trust you with this power. We take it from you, and authorise the county justices of the peace to act in your place.' But the Parliament of William the Fourth holds the opposite language:— 'We wish you to be restored to your jurisdiction of which you were deprived, and have taken effectual means to prevent the abuse which led to the deprivation.' Since, then, the object is directly reversed, and the borough sessions empowered to act; we cannot reasonably doubt that Parliament designed to put an end to that power which had

been for the first time given to a foreign body for the purpose of supplying a deficiency of judicature which the exclusion had caused."

The principles on which the Parliament of William the Third in 1696-7 acted in excluding the jurisdiction of the Borough Court as to appeals on orders of removal, were fully carried out, as to the granting or dealing with the licensing of alehouses, by the Parliament of William the Fourth in 1835.

(a) Afterwards Sir A. Cockburn, L. C. J.

The Clerk of the Peace.

The Clerk of the Peace is styled in the Year Book, "*Attornatus Domini Regis.*"

In counties he is appointed by the *Custos Rotulorum*, 37 Hen. 8, c. 1 (*a*). Lambert, in his "*Eirenarcha*," p. 378, "he is to enjoy his office so long as the *Custos Rotulorum* keepeth his place." See 37 Hen. 8, c. 1; 1 W. & M. c. 21, ss. 5, 6; and as to dismissal, see 27 & 28 Vict. c. 65.

He is to be "an able person, learned and instructed in the laws of the realm." He will attend the sessions as the deputy of the *Custos Rotulorum*, and as the officer of the court: Lamb. Eiren. 378 (Book 4, c. 3), ed. 1602; Dalton, 185 (ed. 1697).

He must execute his office in person or by sufficient deputy: 1 W. & M. st. 1, c. 21.

There is no objection to his holding a commission of the peace in the same county, acting in both capacities: *Forbes v. Lloyd*, 10 Ir. R. C. L. Ex. Ch. 552.

When a second court is formed (21 & 22 Vict. c. 73, s. 9) the Clerk of the Peace is to appoint a proper person as his deputy in that court; and the court will make an order for his remuneration.

Where a division of a county has had appointed to it an independent treasurer it then becomes as a separate county: see the Highway Act, 1864, s. 3; and 41 & 42 Vict. c. 77, s. 38; but no provision is made in the Acts as to the nomination of a Clerk of the Peace for such new "county." See also the Highway Act, 1862, s. 2.

In boroughs the Clerk of the Peace is appointed by the town council: 5 & 6 Will. 4, c. 76, s. 58. After appointment he is an officer of the Recorder's Court, holding his office *quam diu se bene gesserit*, and subject to dismissal by the recorder: *R. v. Hayward*, 31 L. J. M. C. 177; 2 B. & S.

(*a*): 37 Hen. 8, ch. 1, was repealed by 3 & 4 Ed. 6, c. 1, and revived by 1 W. & M., st. 1, c. 21.

As to the appointment of the Clerk of the Peace in Lancashire, see *Harding v. Pollock*, 6 Bridg. 34; *Harcourt v. Fox*, 1 Show. 530; in Durham, see 6 & 7 Will. 4, ch. 19; in Yorkshire and Ely, &c., see 6 & 7 Will. 4, c. 87.

Upon his appointment the Clerk of the Peace will make the

following declaration as directed by 1 W. & M. st. 1, c. 21, sec. 9:

"I, A. B., do declare that I have not nor will pay any sum or sums of money or other reward whatsoever, nor have given, nor will give, any bond or other assurance to pay any money, fee or profit directly or indirectly to any person or persons whomsoever, for such nomination or appointment."

585; *Reg. v. Carmarthen*, 7 A. & E. 756. He cannot act as clerk to the magistrates. As to the removal of clerks of the peace, see 27 & 28 Vict. c. 65; also *R. v. Russell*, L. R. 1 C. P. 738; *Wildes v. Russell*, L. R. 1 C. P. 772; *R. v. Evans*, 4 Mod. 31; 1 Will. & M. St. 1, c. 21, s. 6.

All writs of mandamus and certiorari may be served upon the Clerk of the Peace on behalf of the justices as their recognised officer: see 43 Eliz. c. 5.

When Quarter Sessions to be holden and where.

The times for the holding the County Quarter Sessions are fixed by 11 Geo. 4 and 1 Will. 4, c. 70, s. 35, as follows, namely:—

In the <i>first week after</i> the	{	11th of October.
		28th of December.
		31st of March.
		24th of June.

The “first week after” means the first *full* week; so that should either of the above days fall on a Sunday, the sessions could not be held before the Monday week following: 2 Hale, P. C. 49. As to those times being directory only, see *R. v. Leicester JJ.*, 7 B. & C. 6; 2 Hale, P. C. 50. By 4 & 5 Will. 4, c. 47, the April quarter sessions may be appointed and held not earlier than the 7th March, nor later than the 22nd April, so that they might not interfere with the holding the spring assizes.

Although it would be inconvenient that the quarter sessions should be held in the same county or borough during an assize, still there exists no law against it. *Smith v. R.* 13 Q. B. 738; 18 L. J. M. C. 207.

The borough quarter sessions are to be held once in each quarter; but the selection of the time is at the discretion of the recorder: 5 & 6 Will. 4, c. 76, s. 105.

No statute determines the place for holding the county quarter sessions: Dalt. 185. But by common arrangement between the justices, specified places in their county are fixed for that purpose; and the precept summoning the sessions would name the place in compliance therewith. The county justices can only be restrained in making the selection by some local act (*a*). Jenkins's Rep. 212, pl. 49.

(*a*) As to the annual general sessions for Lancashire, see 38 Geo. 3, c. 58, s. 2; for Kent see 54 Geo. 3, 104; 37 & 38 Vict. c.

45, provides for the transaction of public business and the administration of justice in the county of Hereford.

The Convening the Sessions.

The county sessions are convened by issuing a precept, under the hands and seals of two justices of the county, or of the *custos rotulorum*, and one justice, addressed to the sheriff, requiring him to summon the proposed sessions at some day not less than fifteen days from the date of the precept; to return a grand and petit jury; and give notice throughout his bailiwick to jurors, coroners, gaolers, stewards, constables, and bailiffs of liberties, whose attendance is requisite. Dalton, c. 185, gives the form of the precept.

A conflict between justices issuing separate precepts, convening distinct sessions, as spoken of by Dalton, could hardly happen in the present day: the last instance recorded is to be found in *R. v. Sainsbury*, 4 T. R. 451.

The recorder of a borough issues his precept under his hand and seal, addressed to the clerk of the peace of the borough; and at least ten days' notice must be publicly given of the day for holding the sessions, 5 & 6 Will. 4, c. 76, s. 121.

An irregularity in the precept will not vitiate the proceedings. Lamb, bk. 4, p. 380; see also *R. v. Ipswich Corporation*, 22 Raym. 1237, 1238.

Preliminary Proceedings.

The court having been opened with the usual form by the crier (*a*), the proclamation against vice and immorality read, and the grand jury "charged" as to their duties by the chairman or recorder, the court will consider the propriety of constituting a second court, as empowered under 21 & 22 Vict. c. 73, s. 9, as to the county quarter sessions.

By 7 Will. 4, and 1 Viet. c. 19, s. 1, whenever it shall appear to the recorder, or other person presiding at the quarter sessions of a corporate city or town, that the sessions "are likely to last more than three days," a second court may be formed; and the recorder may appoint, by writing under his hand and seal, a barrister, of not less than five years' standing, to preside; but no recorder can

(a) The Court is opened by the crier making the following proclamation:—"Oyez! Oyez! Oyez! All manner of persons who have

anything to do at the General (Quarter) Sessions of the Peace for this county draw near and give your attendance."

order such second court, *unless* it shall have been certified to him *before* such sessions, under the hands of the mayor, or the hands of two of the aldermen, that the council have resolved that it will be expedient, and for the benefit of the inhabitants, that such power should be exercised ; nor unless the name of the barrister proposed to be appointed shall have been approved by the Secretary of State (*a*).

The assistant barrister, *when* appointed, will be entitled to ten guineas a day ; but not to receive remuneration for more than *two* days : *ib.* s. 2 (*b*).

It has been found expedient to extend this limited power ; and by 40 & 41 Vict. c. 17, it is provided, that the resolution of the council, if and when made, may continue for twelve months from its date ; and the time for the holding the second court extends to four days, for which time the assistant barrister and officers will receive remuneration. This enactment was passed to meet the requirements of the larger towns, such as Liverpool, Manchester, Leeds, Birmingham, Bristol, &c.

The Adjournment.

The general principle is that the sessions, from the first day of the original sessions to the last day of the adjourned sessions, however many adjournments there may be, in law they are but as one day, as expressed by Lord Campbell, L. C. J., in *R. v. Lancashire*, 8 E. & B. 563 ; 27 L. J. M. C. 161 ; see also a case *eo nom.*, 34 L. T. 124 ; *R. v. Surrey*, 1 M. & S. 481 ; but under 21 & 22 Vict. c. 73, s. 12, a judgment or sentence of the court of sessions takes effect from the day of its being pronounced.

The following is the proclamation on the adjournment :—

“Oyez ! Oyez ! Oyez ! All manner of persons who have anything further to do at the general [quarter] sessions for this county, let them depart hence, and give their attendance *at &c., on &c.*, at — o’clock in the forenoon. God save the Queen.”

And which adjournment the clerk of the peace will record.

The sessions should be continued from day to day by adjournment. *R. v. Polsted*, 2 Str. 1262 ; *R. v. Hadington*,

(*a*) So much preliminary routine is here prescribed that no second court is ever likely to be held under the sections.

(*b*) The assistant would receive in some instances more than the recorder.

Burr. S. C. 112. Each adjournment must be made in the presence of two justices, a quorum of the court. *R. v. Middlesex*, 5 B. & Ad. 1113; *R. v. Westington*, 2 Bott. pl. 981.

In the absence of the recorder or his deputy, the mayor may open and adjourn the court at a borough sessions, and respite all recognizances; 5 & 6 Will. 4, c. 76, s. 105.

But no sessions can be adjourned beyond the time which may be appointed for holding the subsequent sessions. *R. v. Grince*, 19 Vin. Abr. 358; 2 Bott. pl. 974.

An adjournment of the sessions to a subsequent sessions is a continuation of the original sessions; so that an appeal dismissed with costs may be adjourned to the subsequent sessions for the purpose of ascertaining the amount, and then making an order thereon. *Rawnsley v. Hutchinson*, L. R. 6 Q. B. 305; 40 L. J. M. C. 97; 23 L. T. 383; 19 W. R. 436.

In several counties, for the greater convenience of conducting the business of the sessions, it is customary to hold two or more courts at different places in the county, by adjournment from the original sessions. The adjourned courts are presided over by a chairman selected by the justices usually forming such court, and the justices composing the court are principally those of the division in which the court is situate; and all the business, whether for appeals or the trial of prisoners, happening in that division, is specially heard and tried at such original or adjourned court. Much discussion has been raised from time to time as to how far the adjourned sessions, so constituted, are to be considered as independent of the original sessions, for the purpose of giving the notices on appeals for "the next," or "the next practicable," sessions for the trial and hearing an appeal. This subject will be treated on under the subject "Appeal;" but it may be sufficient under this general head to refer to *R. v. Sussex*, 7 T. R. 107; *R. v. Suffolk*, 4 A. & E. 319; *R. v. Cornwall*, 6 A. & E. 894; *R. v. Lancashire*, 8 E. & B. 563; 27 L. J. M. C. 161; *R. v. Suffolk*, 4 D. & L. 628; 5 *ib.* 558; 16 L. J. M. C. 36; 17 *ib.* 143; *Rawnsley v. Hutchinson* (*supra*); *R. v. Lancashire*, 34 L. T. 124, which show considerable conflict of opinion had existed on the point. The result of which authorities is that for giving the notice of appeal, the time from which to date the notice is to be taken as from the first day of the *original* sessions, and not as dating from any adjournments thereof. But where the

rules of the sessions, or of the adjourned sessions at which it is the custom to try the appeal, require a particular practice to be followed as to notice of *trial* of the appeal, such local rules may be made applicable to the first day of the adjourned sessions.

As to the adjournment of an appeal, see tit. "Appeal," *post*.

PART II.

APPELLATE SUBJECTS.

ADMIRALTY.

Falsely procuring a person to be admitted a pensioner. UNDER 28 & 29 Vict. c. 134, s. 6, any person who, in order to sustain any claim to any pay, wages, allotment and prize-money, &c., payable by the Admiralty ; or to any effects or money in charge of the Admiralty ; or in order to procure any person to be admitted a pensioner as the widow of an officer of the navy, does any of the following things :—

Offers or utters to any person in the service of the Crown, or of the Admiralty, any false affidavit, knowing the same to be false ;

or

Makes or subscribes, or offers or utters as aforesaid, any false written petition, application, statement, answer, certificate, or voucher, or other false writing, knowing the same to be false.

Falsely personating a pensioner. By sec. 8, any person who, in order to receive any pay, wages, &c., or allowance from the Compassionate Fund of the navy, or any other money payable or supposed to be payable by the Admiralty, or any effects or money in charge or supposed to be in charge of the Admiralty, falsely and deceitfully personates any person entitled, or supposed to be entitled, to receive the same, will in each of the above cases be liable to be imprisoned for a term not exceeding six months, with or without hard labour : ss. 6, 8 (*a*).

(*a*) The party may also be indicted and subject to a sentence of penal servitude for five years, or imprisonment not exceeding

two years. Any information must be commenced within six months, 11 & 12 Vict. c. 43, s. 11.

The parties have their right of appeal, on a sentence of imprisonment without fine, under the Sum. Juris. Act, 1879, ss. 19, 31.

ADULTERATION.

Bread.

6 & 7 Will. 4, c. 37 (*a*). (See “Baker.”)

(As to the City of London, see 3 Geo. 4, c. CVI.)

The ingredients of which bread may be composed are,—Of what flour or meal of wheat, barley, rye, oats, buckwheat, Indian corn, beans, rice or potatoes, or any of them, and with any bread may be composed. common salt, pure water, eggs, milk, barm, leaven, potatoes or yeast, and mixed in such proportions as the baker or seller of bread may think fit, and with no other ingredient or matter whatsoever : 6 & 7 Will. 4, c. 37, s. 2.

Any person putting into any corn meal or flour at the time of grinding, or at any time, any ingredient or mixture not being the genuine produce of corn or grain which shall be ground, or shall knowingly (*b*) sell or expose for sale, separately or mixed, any meal or flour of one sort of corn or grain as the meal or flour of any other sort of corn or grain ; or any ingredient whatsoever mixed with the meal or flour and sold or offered or exposed for sale ;—for every such offence the party will be subject to a penalty of £20 and not less than £5 : sec. 9.

It is immaterial whether the offence be committed in a shop or elsewhere. See *R. v. Kingsby*, 15 J. P. 65 ; 16 L. T. 408 ; *Robinson v. Cliff*, 1 Ex. D. 294 ; 45 L. J. M. C. 109 ; 34 L. T. 689. Immaterial where offence committed.

Every person who shall make for sale, or sell, or expose for sale any bread wholly or partially of peas or beans, or potatoes, or of any sort of corn or grain *other than* wheat, shall mark all such bread a Roman M, under a penalty not exceeding 10s. for every pound weight of such bread sold or exposed for sale without being so marked : sec. 10. Mixed bread to be marked.

Every miller, mealman, or baker in whose house, mill, shop, stall, bakehouse, bolting house, pastry warehouse, out-house, ground, or possession any ingredient or mixture shall Having possession of articles for adulteration.

(*a*) Secs. 34 & 36 are repealed by Stat. Law Rev. Act (No. 1), 1874.

the vendor or his servant : *Core v. James*, L. R. 7 Q. B., 135 ; 41 L. J. M. C. 19 ; 25 L. T. 593. See tit. “Baker.”

(*b*) That is, a knowledge by

be found, which shall after due examination be adjudged by the justice to have been deposited there for the purpose of being used in adulterating meal, flour, or bread, will be subject to the penalty of, for the first offence, £10 and not less than £2; for the second offence, £5; and £10 for every subsequent offence, or in default imprisonment for six months with or without hard labour. (In London the imprisonment will be without hard labour: Sec. 14, 3 Geo. 4, c. CVI.) As to the scale of imprisonment, see 42 & 43 Vict. c. 49, s. 5, Summ. Juris. Act, 1879.

Obstruct- Any person obstructing an officer in the execution of his
ing officers. duty, when seizing any meal, &c., is subject to a penalty not exceeding £10.

Appeal. Sec. 25 gives the right of appeal to the party aggrieved. Such appeal is to be made to the next general quarter sessions which may be holden for the city, county, division, town, or place where such judgment may have been given; but where the conviction happens within six days before the sessions, then the appeal will be to the then next or to the sessions then next following such sessions. And upon the party entering into his recognizance with two sufficient sureties in double the amount of the penalty within twenty-four hours of his conviction to try the appeal and abide the judgment, he may be discharged from custody. On the hearing the appeal, if the conviction be confirmed, the appellant shall forthwith pay down the amount adjudged to be forfeited, with the costs sustained by the appeal; and upon failure in paying such money, any two justices, or any one magistrate having jurisdiction in the place into which any such appellant shall escape, or where he may reside, "shall and may" by warrant commit him to the gaol or the place where he may be apprehended until the penalty be paid. If the appellant succeed, the informer may be adjudged to pay the costs incurred. But no person is to be detained in prison more than three months. 6 & 7 Will. 4, c. 37, ss. 25, 26; and see the Summary Jurisdiction Act, 1879, 41 & 42 Vict. c. 49, s. 32, giving the option of appeal under that Act. See tit. "S. J. Acts," *infra*.

Sale of Foods and Drugs Act, 1875.

38 & 39 Vict. c. 63 (1875); The Amendment Act, 1879,
42 & 43 Vict. c. 30.

The stat. of 1875 repeals 23 & 24 Vict. c. 84; 31 & 32
Vict. c. 121, s. 24; 33 & 34 Vict. c. 26, s. 3; 35 & 36 Vict.
c. 74.

Sec. 2, Act 1875, defines "food" to include every article
used for food or drink by man, other than drugs or water; Definition
of "food,"
"drug,"
"county."
the term "drug" to include medicine for internal or external
use; and "county" to include every county, riding, and
division, as well as every county of a city or town not being
a borough; and sec. 7 of the Amendment Act, 1879, extends
the word "county" to every liberty having a separate court
of quarter sessions; except the liberty of a Cinque Port.

By sec. 3, Act 1875, no person shall mix, or permit any
person to mix, colour, stain, or powder, any article of food
with any ingredient or material so as to render the article
injurious to health with intent that the same may be sold
in that state; a sale of such article renders the party liable
to a penalty not exceeding in each case £50; and after a
conviction for a first offence, every subsequent offence will
be a misdemeanour, and the defendant be liable to six
months' imprisonment. Green tea coated with Prussian
blue is an adulterated article: *Roberts v. Egerton*, 43 L. J.
M. C. 135 (L. R. 9 Q. B. 494). As to special provisions for
stopping and seizing tea, see ss. 30, 31 of 38 & 39 Vict. c. 63.
A compound of ingredients sold under a known name—
as curaçoa—is not within the mischief of the Act (Per
Blackburn, J). *Roberts v. Egerton* (S. C.) 30 L. T. 633 (a).
It is sufficient for the vendor to state the article is an
admixture without giving the proportions of the ingredients:
Pope v. Tearle, 30 L. T. R. 789. As to the sale of admixed
bread under 6 & 7 Will. 4, c. 37, s. 8, see *Gire v. James*, 41
L. J. M. C. 19; L. R. 7 Q. B. 135.

No mixing
of other
ingredients
permitted
injurious
to health.

Sec. 4, Act 1875, enacts, no person shall, except for the
purpose of compounding, mix, colour, stain or powder, or
order, or permit any other person to mix, colour, stain or
powder, any drug with any ingredient or material so as to
affect injuriously the quality or potency of such drug with

Compound
ing ex-
cepted.

(a) Bulwer, Q. C., Recorder of Cambridge, has held "Baking Powder" not to be an article of
food: *Law Times*, p. 228, January
24, 1880.

the intent that the same may be sold in that state, under a penalty upon sale thereof as in sec. 3, for a first and subsequent offence.

Want of knowledge. But no person will be convicted on either of the secs. 2 or 3 if he shows that he did not know of the article being mixed, &c., as therein provided against, and that he could not with reasonable diligence have obtained that knowledge. See sec. 5.

Article sold of quality demanded. It will also be sufficient, under sec. 25, for the vendor to show the article sold was of a quality demanded, and that the vendee had purchased it under a written warranty to that effect; and that the vendor, having no reason to believe it was otherwise, sold it in the same state as when purchased by him. But notice of such defence must be given, or the party will be liable in any event to pay costs. It has been held that an invoice containing a description of the article sold does not constitute a warranty under this section. *Rook v. Hopley*, 3 Ex. D. 209; 47 L. J. M. C. 118; 38 L. T. 649; 42 J. P. 551.

No sale to be made to the prejudice of the purchaser. By sec. 6, Act 1879, no person shall sell to the *prejudice of the purchaser* any article of food or any drug which is not of the nature, substance and quality of the article demanded by such purchaser, under a penalty not exceeding £20; and the section provides that in determining whether (under sec. 6, Act 1875) an offence has been committed by selling to the prejudice of the purchaser spirits not adulterated otherwise than by the admixture with water, it will be a good defence that the spirit has not been reduced below 25 degrees under proof for brandy, whisky, or rum; or 35 degrees under proof for gin. See *Webb v. Knight*, 2 Q. B. D. 530; 46 L. J. M. C. 264; 36 L. T. 791; *Pashler v. Stevenitt*, 35 L. T. 862; 40 J. P. 357, C. A. D.

Davidson v. McLeod, Scotch High Court. Under this section a case was decided in the Scotch Courts—*Davidson v. McLeod*, Justiciary Cases, 4th Ser. v. 5, part 22, p. 1,—where the court was divided in opinion whether an inspector purchasing for analysis was a purchaser within the section; but shortly afterwards the point

Hoyle v. Hitchman, Q. B. D. (40 L. T. 252.) came before the Q. B. D. in *Hoyle v. Hitchman*, 48 L. J. M. C. 97; 4 Q. B. D. 236, where an inspector had bought some “London milk” for analysis, and not for use: the court held he *was* a person within the meaning of the section. To avoid any doubt on the question the Foods and

Act 1879. Drugs Act of 1879, 42 & 43 Vict. c. 30, was subsequently passed, enacting, by sec. 2, that it should be no defence that the purchaser had “bought only for analysis and was

not prejudiced by such sale ;” and also that it would be no defence that the article in question, though defective in nature, or in substance, or in quality, was not defective in *all three* respects. In that case Lush, J., held that the section would apply where the article supplied was of a different and inferior quality from that demanded, and was not limited to the admixture of a foreign substance. But it is held that it is necessary to a conviction that the mixture sold should be a fraudulent one to conceal its quality, and the justices are bound to find this as a fact. *Horder v. Meddings*, 44 J. P. 234 ; see also *Roberts v. Egerton*, 43 L. J. M. C. 135 ; 30 L. J. 633 ; L. R. 9 Q. B. 494.

Article of a different or inferior quality.

It is not a sale to the prejudice of the purchaser where the vendor brings to his knowledge the fact, by label or otherwise, that the article sold is not of the nature demanded. See sec. 8 ; *Sandys v. Small*, 3 Q. B. D. 499 ; 47 L. J. M. C. 115 ; 39 L. T. 118 ; 26 W. R. 814 ; see also *Roberts v. Egerton (sup.)*.

Sale under a label.

But where sold with a label the purchaser's attention should be called to it before the completion of the purchase for analysis or otherwise. *Liddiard v. Reece*, 44 J. P. 233.

As to the sale of labelled mustard, see *Pope v. Searle*, 30 L. T. R. 789 ; coloured green tea, *Roberts v. Egerton (sup.)* ; butter mixed with lard and tallow, *Fitzpatrick v. Kelly*, 42 L. J. M. C. 132.

The following cases are not within section 6 :—

Exceptions to sec. 6.

1. Where the matter or ingredient injurious to health has been added to the food or drug because the same is required for the production or preparation of an article of commerce in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality (a) thereof.

2. Where the drug or food is a proprietary medicine, and supplied in the condition required.

3. Where the food or drug is compounded as mentioned in the Act.

4. Or where unavoidably mixed with some extraneous matter in process of collection or preparation.

By section 7 any compound article must be composed of ingredients in accordance with the demand of the purchaser, under the penalty not exceeding twenty pounds.

It is a condition precedent to a summary conviction under Condition

(a) See Lush's, J., remarks in *Horder v. Meddings*, 44 J. P. 234.

precedent to conviction.

the Acts, that the purchaser must specifically notify to the vendor of the article that it is his intention to have it analysed by the public analyst. It is not enough to say it is purchased for analysis : *Barnes v. Chipp*, 3 Ex. D. 176 ; 47 L. J. M. C. 85 ; 38 L. T. 570 ; 26 W. R. 663 ; sec. 14, Act 1875, by which it is stipulated that after the purchase has been completed the purchaser shall forthwith notify to the seller, or his agent selling the article, that it will be analysed by the public analyst, and shall offer to divide the article into three parts, to be then and there separated, and each part to be marked and sealed, or otherwise secured. One of the parts will be delivered to the seller.

Officer may obtain sample of milk from place of delivery to analyse.

By sec. 3 of the Sale of Food and Drugs Act Amendment Act, 1879, (passed to amend the Act of 1875,) see *Hoyle v. Hitchman* ; *Davidson v. McLeod* (*supra*), a medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable, under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of the Act, may procure at the place of delivery any sample of any milk in course of delivery to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such milk ; and such officer, should he suspect the same to be sold contrary to the provisions of the principal Act, shall submit the same to analysis, and proceedings may be taken as if the same had been purchased under the provisions of sec. 13 of the principal Act.

Section 3, however, is not incorporated with sec. 14 (*sup.*) of the principal Act ; and a sample of the milk need not, therefore, be given to the vendor. A railway porter is not an agent for the vendor of milk sent by rail for delivery. *Bouch v. Hall*, 6 Q. B. D. 19 ; 50 L. J. M. C. 6.

Purchase by a private person.

The purchase may be made by an assistant of an inspector. *Horder v. Scott*, 49 L. J. M. C. 78. A private person purchasing an article of food or drug may have the same analysed, sec. 12 ; and sec. 14 equally applies to such purchase, as to that by a public officer under sec. 13, Act 1875. *Parsons v. The Birmingham Dairy Co.*, 50 L. J. M. C. 111.

Refusal to allow officer to take sample.

A refusal to allow the officer to take such sample subjects the party to a penalty not exceeding £10, sec. 4, Act 1879, or to refuse to sell the article to an officer, sec. 17, Act 1875.

Recovery of penalty.

This is the only penalty under the Act of 1879 ; and it is to be remarked that there is no provision in the Act for its recovery : the Act of 1879 is not incorporated with the

Act of 1875, which contains a clause of procedure ; but the omission is cured by the case *Cullen v. Trimble*, 41 L. J. M. C. 132 ; 26 L. T. 691 ; where the court held, under a similar state of facts, under the Contagious Diseases Animals Act, 1869, that where there are no express words making penalties recoverable by summary procedure, a jurisdiction was impliedly conferred on the justices to deal summarily with the offences under the Act.

Under sec. 10 of the Act 1879, the service of the The summons. summons for an offence, "in contravention of the terms of the *principal* Act," is to be made within a *reasonable* time ; and in the case of a perishable article, not exceeding twenty-eight days (*a*), notwithstanding sec. 20 of the Act of 1875. But this section does not, seemingly by an oversight, include within its operation the prior 4th section. And although in accordance with *Cullen v. Trimble* (*supra*), the justices may have an implied jurisdiction to summarily hear a charge made under sec. 4, still there can be no appeal on their decision under sec. 23 of the principal Act.

The proceedings under the principal Act are under sec. 20, and when the analyst has analysed an article and given his certificate of the result, the person causing the analysis may take proceedings, for the recovery of the penalty imposed, before any justices having jurisdiction in the place where the article or drug was actually delivered to the purchaser. And such penalties are to be recovered under 11 & 12 Vict. c. 43.

The analyst's certificate will be received as sufficient evidence of the facts therein stated, unless the defendant shall require his attendance as a witness. Analyst's certificate evidence.

If the defendant relies upon any of the exceptions in his favour in the Act, the onus of proof rests with him : sec. 24, Act 1875. Both the defendant and his wife may be witnesses : sec. 21, Act 1875. Onus of proof on defendant.

Sec. 23, Act 1875, gives to the person convicted of an offence under the Act the right of appeal to the quarter sessions. The appellant will give notice of appeal (*b*), and enter into his recognizances within three days after conviction, with two sureties, to try the appeal, and to be forthcoming to abide the judgment and determination of the court, and to pay such costs as shall be awarded. The appeal will be to Appeal.

(*a*) Will the twenty-eight days in all cases be considered a reasonable time ? It would seem so, if twenty-eight days is the time applicable to *perishable* articles.

(*b*) Sec. 23 gives the bare right of appeal. As to the notice, see *In re Blues, infra*. Tit. "Sum. Juris. Acts," "Appeal."

the next general or quarter sessions for the city, county, or place wherein the conviction was made. The appellant has also the option to make his appeal under the Sum. Juris. Act, 1879; see sec. 32. And see tit. "Sum. Juris. Acts."

Seed.

32 & 33 Vict. c. 112 (1869). Amended by 41 Vict. c. 17 (1878).

Definition
killing
or dyeing
seed.

Any person who "kills" or causes any seeds to be killed; or dyes or causes any seeds to be dyed; or sells, or causes to be sold, any killed or dyed seeds, will be subject to, for the first offence a penalty not exceeding £5; and for a second or any subsequent offence a penalty not exceeding £50; and moreover upon any second or subsequent offence against the Act the court may order the offender's name, occupation, place of abode and place of business to be published, and the particulars of his punishment to be published, at the expense of the offender, in such newspapers or other manner as the court might see fit.

41 Vict. c. 17, defines the term "to dye seeds" as, to apply to seeds any process of colouring, dyeing, sulphur, smoking, in lieu of the definition in 32 & 33 Vict. c. 112. This alteration was made in consequence of the decision of the Queen's Bench Division in *Francis v. Maas*, 47 L. J. M. C. 83; 38 L. T. 100, where old clover seed had been sulphured and smoked so as to make it look like young seed; and the court thought they could not treat "*quality*" as synonymous with "*kind*."

Intent to
defraud.

It will be sufficient in the proceedings to allege that the act was done "with intent to defraud," or "to enable some other person to defraud," without alleging any particular person. On the trial it will not be necessary to prove an intent to defraud any particular person, or to enable any particular person to defraud any particular person. It will be sufficient to prove that the party accused did the act charged with an intent to defraud, or with intent to enable some other person to defraud, or with the intent that any other person might be enabled to defraud. Sec. 5, Seeds Act, 1869.

Appeal.

A conviction under these Acts is subject to appeal under sec. 6, 32 & 33 Vict. c. 112, whereby the party may appeal to next Court of General Quarter Sessions held not less than twelve days after the day of such conviction for the county

or place where the conviction is had in manner prescribed by 24 & 25 Vict. c. 96, s. 110: The Larceny Act, 1861, see *infra*, tit. "Criminal Law."

See also tit. "Summary Jurisdiction Acts," *infra*, Act 1879, s. 32, by which there is the option to appeal on election under that Act.

AFFILIATION.

Prior to the Poor Law Amendment Act, 4 & 5 Will. 4, c. 76, the justices in quarter sessions had an original jurisdiction, under 13 & 14 Car. 2, c. 12, s. 19, to make orders in matters of affiliation; the justices, however, in petty sessions more commonly made the orders under the Stat. of 18 Eliz. c. 5, the quarter sessions acting on appeal; and on such appeal, the sessions having an original jurisdiction, might not only have quashed the order appealed from, but could have made a new order on *another* person. *Burrell's Case*, 1 Mod. R. 20; *Pridgeon's Case*, 1 Bulst. 255; *R. v. Smith*, 2 Bulst. 340. Jurisdiction.

The 4 & 5 Will. 4, c. 76, s. 72, constituted the quarter sessions the only tribunal for making the order of affiliation where the child became chargeable to the parish; but by 2 & 3 Vict. c. 85, s. 1, that jurisdiction was transferred to the special and petty sessions.

Those provisions have now been all repealed, and the statutes affecting orders of affiliation are 4 & 5 Will. 4, c. 76; 7 & 8 Vict. c. 101; 8 & 9 Vict. c. 10; 35 & 36 Vict. c. 65, and 35 & 36 Vict. c. 9; 37 & 38 Vict. c. 88; 39 & 40 Vict. c. 61.

Under 35 & 36 Vict. c. 65, s. 3, any *single* woman who may be with child, or who may be delivered of a bastard child, may, either before the birth, or at any time within twelve months after the birth, or at any time thereafter, upon proof that the alleged father had within twelve months after the birth of the child paid money for its maintenance; or at any time within twelve months next after the return to England of the alleged father, upon proof that he had ceased to reside in England within twelve months next after the birth, make application to any *one* justice of the peace acting for the petty sessional division of the county, or for the city, borough, or place in which she may reside, for a Proceedings by a single woman against the putative father by summons.

Personal service.
When application made prior to birth of child.

summons to be served on the man alleged by her to be the father of the child; and if such application be made *before* the birth of the child, the woman shall make a deposition upon oath, stating who is the father of such child; and *such* justice shall thereupon issue *his* summons to the alleged father to appear at a petty sessions, to be holden after the expiration of six days at least, for the petty sessional division, city, borough, or place in which such justice usually acts (*a*). And by the 7 & 8 Vict. c. 101, s. 4, no order is to be made unless applied for within forty days from the service of the summons. Where the application is made before the birth of the child, see 8 & 9 Vict. c. 10, s. 4.

"Single woman."

The term "single woman," in sec. 3, will include a widow. *R. v. Wyndham*, 2 Q. B. 541; and see *Antony v. Cardenham*, Fost. 309; 2 Bott. 194, where a widower was held to be as a single man.

Married woman may be treated as a single woman.

A married woman may be so separated from her husband as to become the mother of an illegitimate child, in respect of which an affiliating order may be made: as where the husband, during the usual time for gestation, is absent as a prisoner undergoing penal servitude. *R. v. Collingwood*, 17 L. J. M. C. 168; 12 Q. B. 681; *Ex parte Grimes*, 22 L. J. M. C. 153; *R. v. Pilkington*, 21 L. T. 165; 17 Jur. 554, in which Campbell, L. C. J., and Erle, J., supported *R. v. Collingwood*, referring to *R. v. Luffe*, 8 East, 193. And see *Medway Union v. Maidstone Union*, 5 Q. B. D. 31, where a wife had ceased to retain her civil rights, she having left her home, and living apart from her husband in adultery.

The mother must be in England, or English territory, at the birth of the child.

To obtain an order of affiliation, the child must be born in England: the place where the mother became pregnant is immaterial, and not for the consideration of the justices: *Hampton v. Rickard*, 43 L. J. M. C. 133. In that case the parents were Irish; and the cohabitation took place in Ireland, but the material facts were the birth of the child in Cornwall, and the presence of the father there at the time of the service of the summons, and the making the order. In *R. v. Blane*, 18 L. J. M. C. 216; 13 Q. B. 769, the mother of the child was a Frenchwoman, the father English; but the child was born in France. It was held the Act did not apply to this case; and from the reasoning of the judges it would seem that the same rule would apply where the child of an Englishwoman was born illegitimate abroad.

(*a*) This 3rd section is substantially the same as section 2 of 7 & 8 Vict. c. 101,

See also Blackburn's, J., judgment, in *Marshall v. Murgatroyd*, 40 L. J. M. C. 7; L. R. 6 Q. B. 31, in which his lordship says, in referring to *R. v. Blane*, "The Act only applies to a child born of a mother in *English territory*;" and at the same time holding that the birth of a child on board an English ship upon the high seas was a birth within the dominion of England.

Excepting where the guardians of a union or parish are authorised to apply for an affiliation summons on the child becoming chargeable to the union or parish, under 36 Vict. c. 9, s. 5, the application must be made by the mother; and in each case, should she die before any hearing takes place, no order can be made, as her evidence is imperative. *R. v. Armitage*, 27 L. T. 41; 35 & 36 Vict. c. 65, s. 4; 8 Vict. c. 10, s. 6. See p. 47, as to the death of the mother pending an appeal.

When the application is made by the mother *before* the birth of the child, it must be upon her deposition or oath, stating who is the father of the child: see Bovill's, C.J., remarks, in *R. v. Fletcher (a)*; if made *after* the birth, it must be made within twelve months of the birth, unless the father shall have paid money for its maintenance within the first twelve months after the birth. Where the summons is applied for *after* the lapse of twelve months from the birth, Lord Campbell, L. C. J., remarked, that although not expressly required by the statute, the justice should not issue the summons, unless upon evidence that the father had in fact paid the money for its maintenance within the twelve months: see *R. v. Berry*, 28 L. J. M. C. 86; 1 Bell, C. C. 46; or also, that he had ceased to reside in England during the twelve months where such consideration is involved.

Where the mother's application is made within the twelve months, as required, the summons need not be served until after the expiration of the twelve months. See *Potts v. Cambridge*, 8 E. & B. 847; 27 L. J. M. C. 62, as where the address of the defendant was not known, and in such case the application should be made, but the service of the summons may be suspended: see *R. v. Chugg*, 22 L. T. 556; 11 Cox C. C. 558, Q. B.; *Ex p. Harrison*, 19 L. T. 114.

(a) Should the summons have been issued without the depositions taken, the defect will be cured should the respondent appear at the petty sessions and raise no objection. In such case the justices may make an order:

R. v. Fletcher, L. R. 1 C. C. R. 320; 40 L. J. M. C. 123; 24 L. T. 742; 19 W. R. 781; see also *R. v. Berry (supra)*; *R. v. Wiltshire*, 12 A. & E. 793; *R. v. Stoddart*, 1 G. & D. 654.

Application by the mother —

before birth of child.

See also *R. v. Simmons*, 28 L. J. M. C. 183.

Summons issued within twelve months need not be served until after.

The court in *R. v. Damarell*, 37 L. J. M. C. 21, assumed (if the L. C. J. be correctly reported), that as the time was limited for the woman to make her application to the twelve months after the birth of the child, if the father were absent beyond that period, her remedy against him would be gone. That would, no doubt, be so, if no application by the mother were made; but it could be made within the twelve months, and, as in *Potts v. Cambridge* (*supra*), the service of the summons be postponed. See also *R. v. Chugg* (*supra*, p. 31), *post*, p. 34.

Applica-
tion to
be made
within
the local
jurisdic-
tion.

The mother's application must be made within the local jurisdiction in which she resides, and so appear on the face of the order; the justices elsewhere have no jurisdiction, and proceedings had before them would be abortive; *Sharp v. Aspinall*, 10 B. & C., 47; *In re Peerless*, 1 Q. B. 143; *R. v. Martin*, *ib.* 1037; *R. v. Hickling*, 7 Q. B. 890; if she be not there with a fraudulent or improper object, such as for the avoiding the decision of a bench which had already decided against her, as in *R. v. Myott*, 32 L. J. M. C. 138. Should she have no settled place of residence, she may apply to the justices of the division where she may happen for the time to be. *Lawrence v. Ingmire*, 20 L. T. 391.

The Justice
who hears
the infor-
mation to
grant the
summons.

The justice who hears the information should at the time grant the summons, for it is only *such* justice, and he alone, to whom the application had been made, has power to issue it: *R. v. Pickford*, 30 L. J. M. C. 133; 1 B. & S. 77. That case was decided on the 2nd sec. of 7 & 8 Vict. c. 101, now repealed; but the words of sec. 3 of 35 & 36 Vict. c. 65, are similar, and the authority will still apply.

Proceed-
ings when
chargeable
to a parish,
applica-
tion by
guardians
against the
putative
father.

Under 36 Vict. c. 9, sec. 5, upon a bastard child becoming chargeable to a union or parish an application may be made by the guardians (*a*) to *two* justices in petty sessions having jurisdiction in the division where the union or parish is situate, for a summons requiring the attendance of the alleged father to appear before two justices having the like jurisdiction, to show cause why an order should not be made upon him to contribute towards the relief of such child. And the summons may be heard upon his appearance, or upon proof of the summons having been served upon him or left at his *last* place of abode six days at least before the petty sessions (*b*), and then upon hearing the

(*a*) Costs may be awarded against either party, see 11 & 12 Vict. c. 43; 39 & 40 Vict. c. 61,

s. 24.

(*b*) See *R. v. Smith*, 32 L. T. 394.

evidence of the mother, as upon an application by herself, an order may be made on the putative father to pay to the guardians, or one of their officers, a sum of money towards the relief of the child *so long as it should continue chargeable*.

But this order is limited thus :—

Sub-sec. 1.—To the time of actual chargeability ;

Sub-sec. 2.—To cease, excepting for the recovery of arrears, when the *mother* shall have obtained an order ;

Sub-sec. 3.—The order is not to relieve the mother from her liability to maintain the child ;

Sub-sec. 4.—The alleged father has his right of appeal ;

Sub-sec. 5.—Upon the mother's application for an order, after the guardians shall have obtained their order, such order may be used as *prima facie* evidence that the man against whom such order has been made is the father of the child.

It will be observed that this section imposes no limitation as to the time during which the guardians may proceed against the putative father, as there is in reference to the mother's application. The actual chargeability of the child to the union or parish is the sole condition on which the guardians act ; and such chargeability would depend on the place of its settlement under 4 & 5 Will. 4, c. 76, s. 71. It should further be noticed that when the mother initiates the proceedings she may make her application to *one* justice for the summons which is to be *personally* served ; the application on the part of the guardians is to be made to *two* justices, and the service of the summons *need not be personal*.

Guardians not limited by time.

Distinction : mother's or guardian's application.

No order for the maintenance of a bastard child can be made unless it be applied for at a petty sessions within forty days from the service of the summons, after the birth of the bastard child, on the person alleged to be the father of the bastard child. *Ex parte Boynton*, 1 L. M. & G. 12 ; *R. v. Rose*, 15 L. J. M. C. 6 ; 2 N. S. C. 166 ; 7 & 8 Vict. c. 101, s. 4.

Application for order to be made within forty days of the summons.

Proof of service of the summons out of England or Wales is not a "due service :"
R. v. Lightfoot, 25 L. J. M. C. 115. Lord Campbell, in that case, dissented from the judgments of Erle and Crompton, JJ. ; the Lord Chief Justice holding that a *personal* service (the alleged father was living in Scotland, and was there personally served) "must be a due service wherever it might take place, supposing always that the party served may conveniently comply with it." The rest of the court considered the words of the act strictly

Service of summons out of England or Wales.

confined its whole operation to "England and Wales" for all purposes.

Avoidance of service of summons by defendant.

The man's quitting his last place of abode at which the service of the summons had been made should be *bonâ fide*, and not for the purpose of avoiding the summons, and availing himself of any change of abode: see *R. v. Higham*, 26 L. J. M. C. 116. And even where the defendant made his affidavit that he had not left his home to avoid service; yet, the order being good on the face of it, and he not swearing he was not the father of the child, or suggesting an unjust charge had been attempted to be fastened upon him by reason of his absence, the court *refused* to assist him. *R. v. Davis*, 22 L. J. M. C. 143; S. C. 21 L. T. 170.

Service of summons on the mother's application; and guardians.

Where the mother has obtained the summons there must be personal service on the putative father; or where the guardians have obtained the summons, the service may be either personal or by its being left at "the last known place of abode" of the defendant "six days at least" before the day of holding the petty sessions: see *ante*, p. 30.

When the mother's application made within the twelve months, service of summons may be after.

The application for the summons is to be made by the mother within twelve months of the birth of the child: see *ante*, p. 31; but if made within the time, the service of the summons may be *after* the twelve months. A bastard child was born on 20th March, 1868, and the mother applied for a summons on 18th April, 1868. The summons issued on the same day was not served, as the process server was unable to find the alleged father. The mother finding the man's address, obtained, about a fortnight after, another summons on 14th January, 1870, which was served on him, and he appeared to it. The justices were held to have had jurisdiction, although more than twelve months had elapsed from the birth of the child, the mother having initiated the proceedings within the twelve months. *R. v. Chugg*, 22 L. T. 556; 11 Cox C. C. 558, Q. B.

Proof of service of summons.

The service of the summons may be proved by affidavit: 35 & 36 Vict. c. 65, s. 6; so also as to a service *out* of the district: see sec. 4, *ib.*

Non-appearance of party summoned.

When the party summoned does not appear by himself, or counsel or solicitor (8 Vict. c. 10, s. 7), 35 & 36 Vict. c. 65, s. 4, and the justices proceed in his absence, it is important that strict proof of the service of the summons should be required by the court, as the defendant may eventually take advantage of any substantial defect which may exist in the service. *Mitchell v. Foster*, 12 A. & E. 472;

R. v. Evans and another, JJ., 19 L. J. M. C. 151 ; *S. C. Ex parte Jones*, 15 L. T. 142.

The due service of the summons goes to the jurisdiction of the justices ; and although they are, in the first instance, to form their opinion on the evidence on which their jurisdiction is founded, and which warrants their proceedings, yet justice requires that if it be clearly shown that the fact fails, and that they ought never to have proceeded, the party interested will be at liberty to move the court to quash any order made thereon. See *R. v. Davis*, 22 L. J. M. C. 143 ; *S. C. sub nom. Ex parte Davis*, 21 L. T. 170 ; *R. v. Brown*, 1 L. T. 29.

The presumption is always in favour of the legitimacy of the child ; and this even although the husband and wife are living apart. Lord Langdale, M. R., in *Hargrave v. Hargrave*, 9 Beavan, 552—thus defines the proposition :—A child born of a married woman is in the first instance presumed to be legitimate. This presumption thus established by law is not to be rebutted by circumstances which only create a doubt and suspicion ; but it may be wholly removed by showing that the husband was—first, incompetent ; secondly, entirely absent so as to have had no intercourse or communication of any kind with the mother ; thirdly, entirely absent at the period during which the child must in the course of nature have been begotten ; and fourthly, only present under such circumstances as would afford clear and satisfactory proof that there was no sexual intercourse.

The presumption in favour of legitimacy can be rebutted by either proving a divorce *a mensâ et thoro*, or by some cogent and irresistible proof of non-access in a sexual sense. If the wife be living in open adultery it does not necessarily follow, should the husband have had an opportunity of access, that a child born, while such opportunity existed, was not the husband's : *R. v. Mansfield*, 1 Q. B. 444 ; and in which case Denman, L. C. J., explains the two different reports of the remarks of Alderson, B., in *Cope v. Cope*, as reported in 1 Moo. & Rob. 269 ; and *S. C.* 5 C. & P. 604. In *Moo. & Rob.* the learned Baron is reported to have said, in addressing the jury (and which words Denman, L. C. J., mainly approved)—“ You ought to be very careful in examining the evidence, and to have such cogent proof before you as leaves no doubt in your minds that the husband *did not* avail himself of the opportunity of intercourse. See also *Plowes v. Bossey*, 31 L. J. Ch. 681 ; 7 L. T. 306 ; *Saye and Sele Peerage*, 1 H. L. Cas. 507 ; *Hargrave v.*

Hargrave, 9 Beav. 552; *Gurney v. Gurney*, 32 L. J. Ch. 456; 8 L. T. 380; *Morris v. Davies*, 5 Cl. & Fin. 163; 3 C. & P. 215.

Where there is a divorce *a mensâ et thoro*, the children born during separation are *primâ facie* illegitimate. *St. George v. St. Margaret*, 1 Salk. 123; *Hubback on Succession*, 412.

Onus of
proof.

The *onus probandi* of proving the illegitimacy rests entirely with the person interested in so doing. There is no onus on the party whose legitimacy is in question to show opportunities of access, or what the circumstances were under which the access took place. *Kindersley, V. C., Plowes v. Bossey*, 31 L. J. Ch. 681; 7 L. T. 306.

In *R. v. Sourton*, 5 A. & E. 186, Pattison, J. says: "It will not be disputed that the parents may bastardize their issue by any evidence *except* non-access;" they cannot, however, give any evidence proving or tending to prove non-access: see *Atchley v. Sprigg*, 33 L. J. Ch. 345, in which Kindersley, V. C., explains an error in the reports of *Plowes v. Bossey* (*supra*), where the wife's evidence (Mrs. Bossey's) is, by mistake, set out as evidence used in the suit; whereas it was rejected as inadmissible. The evidence must be independent of husband or wife. See *In re —'s Trust*, as reported in 39 L. J. Ch. 192 (James, V. C.); S. C. *In re Ridout's Trust*, L. R. 10 Eq. 41. The mother may prove her adultery in order to fix the paternity of the child *after* proof *aliunde* of non-access. *Legge v. Edmunds*, 25 L. J. Ch. 138; *R. v. Souton*, 6 A. & E. 180; *Yates v. Chippendale*, 11 C. B. N. S. 512.

Proceed-
ings not
within
Evidence
Act, 1869.

Proceedings under the bastardy laws are not "proceedings instituted in consequence of adultery" within the "Evidence Further Amendment Act, 1869" (32 & 33 Vict. c. 68), sec. 3, so as to make the evidence of the husband, who has refused to maintain his wife's child on the ground that he is not the father, admissible to prove his non-access to his wife, and thereby bastardize the child. *The Guardians of the Nottingham Union v. Tomkinson*, 4 C. P. D. 343; 48 L. J. M. C. 171; 43 J. P. 735 (a).

Mother
should be
prepared
to prove
her case
in the first
instance.

The woman, having no right of appeal as the man has, should at the first hearing be prepared to support her case with her best evidence, and, if necessary, obtain an adjournment from time to time, which the justices may grant with

(a) This case clearly overrules *Hall, V. C.*, in *In re Yearwood's Trusts*, 5 Ch. D. 545; and

the remarks in *Taylor on Evid.* 7th ed., s. 95.

or without terms, as they may think reasonable: 7 & 8 Vict. c. 101, s. 4; and such adjournments may even extend beyond the requisite forty days for the making the order after the date of the service of the summons: *Ex parte Harrison*, 19 L. T. 114; 16 Jur. 726. Care should be taken that such adjournments appear on the face of the order to show jurisdiction. See *R. v. Rose*, 2 New Sess. Cas. 166; 15 L. J. M. C. 6.

Under the 7th sec. of 36 Vict. c. 9, when two justices are not present at the hearing, the one present may alone adjourn the case. One justice may adjourn the case.

A statement on the order that the defendant appeared by his counsel or solicitor will be sufficient. *R. v. Shipperbottom*, 16 L. J. M. C. 113; 2 New Sess. Cas. 641, and *post*, p. 41.

It is absolutely necessary that the mother should be present, and be examined as a witness, at the hearing on the summons. No order can be made without her testimony, confirmed, as it must be, in some "material particular" to the satisfaction of the justices: 7 & 8 Vict. c. 101, s. 3; *R. v. Armitage*, 27 L. T. R. 41; *Jessop v. Brierly*, 36 J. P. 488. The effect of the corroborative evidence is entirely for the justices to determine: *Lawrence v. Ingmire*, 20 L. T. 391; *Cole v. Manning*, 46 L. J. M. C. 175; 2 Q. B. D. 611; 35 L. T. 941; and it should be evidence, although not in direct relation to the actual begetting of the child, yet leading to the conclusion that the man summoned was, in fact, the father of the child. See also *R. v. Pearcey*, 17 C. B. 902; 18 L. T. 238. The mother must be examined as a witness and corroborated.

In *R. v. Berry*, 28 L. J. M. C. 86; 1 Bell, C. C. 46, a case before the Court of Criminal Appeal on an indictment for perjury, it was held that evidence of the payment of money by the putative father, where given by independent testimony, would be corroborative evidence of paternity; and in *Hodges v. Bennett*, for the purpose of the application by the mother for the summons, after the limited twelve months, her evidence of such payment did not require confirmation; nor did it on the hearing, although only proved by the mother, but then she was corroborated in other material particulars.

Questions put to the mother as to her having had connection with other men at times not affecting the time of the conception of the child, will go solely to her credibility; her answers must then be taken as conclusive (a), and she cannot be contradicted: *R. v. Gibbons*, 31 L. J. M. C. 98; L. & C. Examination on reputation of the mother.

(a) If the evidence be admitted, however wrongly, yet perjury may be assigned on it: *R. v. Gibbons* (*supra*).

C. C. 109 ; 5 L. T. 805. But the question of her connection with some other man, tending to show that he may have been the father of the child, is material, on which she may be contradicted: *Garbutt v. Simpson*, 32 L. J. M. C. 186 ; 8 L. T. 423 ; *R. v. Holmes*, 41 L. J. M. C. 12.

Witnesses may be summoned, and on non-appearance a warrant may issue. A witness refusing to give evidence may be committed for fourteen days, unless he sooner consent. 7 & 8 Vict. c. 101, s. 70.

Refusal of order is in the nature of a non-suit.

Upon the petty sessions refusing to make an order on the hearing, the refusal is in the nature of a nonsuit, and the woman is entitled to renew her application, and to have a second summons ; but the justices on the second hearing would doubtless look on the previous dismissal as cogent evidence in the defendant's favour. The statute 7 & 8 Vict. c. 101, contains no directions as to what is to be done if the case is not made out to the satisfaction of the justices ; neither does the subsequent statute, 8 Vict. c. 10. This latter statute gives a schedule of forms, but no form of adjudication in favour of the party summoned, nor is there any enactment of any kind as to giving him costs. And on this Lord Denman said, the court could not see that the legislature intended the sessions (petty) to have any power to adjudicate finally against the mother. If the matter had been fully inquired into in the first instance, any new evidence adduced on the second occasion would be viewed with suspicion, and should be sifted accordingly ; but the dismissal cannot operate as a bar to further inquiry : *R. v. Machen and another*, 18 L. J. M. C. 213 ; 14 Q. B. 74 ; *S. C. Jones v. Machen*, 3 New Sess. Cas. 629. This case has always been followed ; and where the justices have refused to entertain a further application a mandamus to hear has been obtained. See *Ex parte Westerman*, 16 L. T. 420 ; *R. v. Harrington*, 9 L. T. 721 ; *R. v. Brisby*, 18 L. J. M. C. 157 ; *R. v. Grant and another*, 36 L. J. M. C. 89. *R. v. Machen* is founded on the old authority, *R. v. Jenkin*, Cas. Temp. Hard. 301.

Second summons on first application.

When the summons is dismissed on some matter of form only, and not on the merits, the second summons may issue without a fresh application ; the application is not then exhausted. *R. v. Lancashire JJ.*, 29 L. T. 886 ; 22 W. R. 329, Q. B. See also *R. v. Glyne*, L. R. 7 Q. B. 16 ; 41 L. J. M. C. 58 ; 26 L. T. 61 ; *S. C. eo nom.* *R. v. Flintshire* 20 W. R. 94 ; *R. v. Esser*, 49 L. J. M. C. 67 ; *S. C. R. v. May*, 5 Q. B. D. 382. But it would seem that the second summons should be granted by the justice who received the

information : see *supra* ; *R. v. Pickford*, p. 32 ; or otherwise there should be a new application. Where, however, the summons is dismissed on the merits, as for instance, on the ground that the corroborative evidence was insufficient, a fresh application would be necessary, and the proceedings must begin *de novo* within the year of the birth : 8 & 9 Vict. c. 10, s. 2 ; *R. v. Thomas*, 8 L. T. 460 : see also *Ex parte Harrison*, 19 L. T. 114 ; 16 Jur. 726 ; *R. v. Essex JJ.* 49 L. J. M. C. 67 ; *S. C. R. v. May and others, JJ. Essex*, 5 Q. B. D. 382 ; *Staples v. Staples*, 41 L. T. 347.

Not when summons dismissed on merits.

In *R. v. Harrington*, 9 L. T. 721, the dismissal was in consequence of the woman not being prepared with corroborative evidence ; and on an order being made on the second summons, the Court was moved by certiorari to quash it. Cockburn, L. C. J., said that the dismissal was not upon the merits ; and added, " If there had been a hearing upon the merits, and a dismissal on the merits, and if that had been brought to the notice of the justices upon the second application, and *no other* evidence produced, I think that ought to be a sufficient answer." In the case of *R. v. Buckinghamshire JJ.*, 18 L. J. M. C. 113 ; 3 N. Sess. Cas. 500, after a dismissal of the woman's application in one jurisdiction she removed into another, and there obtained an order on a second summons ; it was there objected that the first application had been dismissed on the merits, but with no effect, and an order was made. On appeal to the quarter sessions, the order being confirmed on that point, the appellant retired from the case before any evidence was heard or offered, and the order was confirmed, and the appellant moved the Q. B. to quash the order. Erle, J., held that as the Court of Appeal had jurisdiction to hear and determine the question, and had exercised their discretion, he refused to interfere, at the same time expressing the opinion that the former decision on the *merits* in favour of the putative father was an answer to the second application. A further point arose in that case. The mother was not examined as a witness on the appeal ; but as the appellant retired from the case on being defeated in the objection in law, the sessions were right in confirming the order, although 6, 8 & 9 Vict. c. 10, had not, so far, been complied with, and the decision was final.

Where dismissed on ground of no corroborative evidence.

Where summons in another jurisdiction.

At petty session, decision on ground of no corroborative evidence, is not a decision on merits.

Where, however, on the appeal, the court have heard the evidence of the mother and her witnesses, and dismissed the order on the *ground that her evidence is not corroborated*, although such a decision, if made at petty sessions, would

Where order dismissed on appeal on the ground

of no corroborative evidence—decision is final.

not be one on the merits, *R. v. Machen (supra)*, and would entitle the mother to apply again on obtaining further evidence of confirmation, the Q. B. held, in *R. v. Glynn and another*, 41 L. J. M. C. 58; 26 L. T. 61; S. C. *sub nom. R. v. Flintshire*, 20 W. R. 94; that there was no authority against holding that the decision of the superior tribunal under such circumstances was final; and it was compared to a decision in a criminal case, where there is not sufficient evidence to convict. S. C. L. R. 7 Q. B. 16.

Decision of quarter sessions, to be final the case must have been heard.

But to render the decision of the quarter sessions final, the court must have heard the case to create the estoppel. Thus, where the woman by mistake or accident was not present at the sessions to support her order, and in her absence the order was quashed, the Queen's Bench granted a mandamus to justices in petty sessions to issue a fresh summons on a new application. Had the woman *designedly* absented herself, that, the court said, would be matter *for the justices to consider* on the hearing; and on which they would exercise their discretion as to dismissing the case, or taking into consideration the costs of the abortive trial: *R. v. Essex JJ.*, 49 L. J. M. C. 67; S. C. *sub nom. R. v. May and others*, 5 Q. B. D. 382.

Form of order, care in drawing up.

The order must be drawn up with great care. Every circumstance necessary to show that the justices acted within and with jurisdiction must appear on the face of the order, or advantage can be taken of the omission either on appeal, or on a motion to quash the order in the High Court. Forms of orders are to be found in the schedules to the acts: but these may not meet every case; they may, however, be adapted to the particular circumstances of each case. Some decisions have been given which may guide the draftsman, by showing the importance of accuracy; but, generally, it may be suggested that *every statutable* circumstance which is required to happen or be done to create jurisdiction as a condition precedent should from the first application by the mother or guardians be set forth. Statement of jurisdiction: *R. v. Milner*, 14 L. J. M. C. 157; 2 N. Sess. Cas. 54. For example, the following points may be referred to as raising questions fatal to the order:—As to the application, see *R. v. Fletcher*, 40 L. J. M. C. 123. The absence of a statement in the order that it was applied for within forty days of the service of the summons on the putative father, see *R. v. Rose*, 15 L. J. M. C. 6; 2 N. Sess. Cas. 166; *Ex parte Boynton*, 1 L. M. & P. 12; the residence of the woman within the division: *R. v. Higham*, 26 L. J. M. C.

116; the hearing having been in the presence of the party summoned, *R. v. Percy*, 21 L. J. M. C. 129; 18 L. T. 238; *R. v. Duke of Grafton and others*, 17 L. J. M. C. 125; 11 L. T. 156; or before his solicitor or counsel: *R. v. Shipperbottom*, 16 L. J. M. C. 113; 2 N. Sess. Cas. 641; the direction for the payment of the maintenance-money: *R. v. Parbury*, 5 Q. B. D. 126; the mother was confirmed in some material particular: *R. v. Read*, 9 A. & E. 619; 5 L. J. M. C. 89. Reference to those cases will be sufficient to point out the materiality of the special averments in the order.

The drawing up of the order is the mere formal record of the judgment, the actual judgment being the *oral* declaration of the decision of the bench; and therefore the complainant has within a reasonable time the right to have the record drawn up correctly: *Ex parte Johnson*, 3 B. & S. 947; 32 L. J. 193, overruling *R. v. Flintshire*, 15 L. J. M. C. 50, and the court has no power to amend the order, under 12 & 13 Vict. c. 45, s. 7, where the error is one *in substance*: *R. v. Parbury*, 5 Q. B. D. 126.

An order *wholly* bad, as where there is a vital omission to show jurisdiction, may, however, be abandoned as null and void, and a second summons obtained, and a new order made: *R. v. Brisby*, 18 L. J. M. C. 157. It would not be necessary, in such case, to quash the bad order on appeal, or by *certiorari*, or even to tender the costs of the first summons: *R. v. Langton*, 27 L. T. 355; *Wilkins v. Hemsworth*, 7 Ad. & E. 807. As regards the question of costs, if the application were of the nature of a second one, the justices would not be bound to entertain it until the costs of the first had been either tendered or paid, and the defendant replaced in his original position. *R. v. Hincliffe*, 10 Q. B. 356; 16 L. J. M. C. 78.

But where the order is good in part only, that part which is good may be enforced, provided it is clearly distinguishable from, and is in no way dependent upon that part which is bad. See *R. v. Green*, 20 L. J. M. C. 168; *Ex parte Colley*, 16 L. T. 319; see also *R. v. Maulden*, 8 B. & C. 78; *R. v. St. Nicholas, Leicester*, 3 A. & E. 79; *R. v. Winster*, 19 L. J. M. C. 185. In *R. v. Stoke Bliss*, 6 Q. B. 158; 13 L. J. M. C. 151 (explained by Pattison, J., in *R. v. Bolton*, 14 L. J. M. C. 37), the principle is affirmed, that the bad portion being ancillary to the good, the whole is bad.

After adjudging the man to be the father of the child, the justices may, if they see fit, having regard to all the

The *oral* judgment the decision.

Bad order may be abandoned.

Costs.

Part of order good may be enforced.

For what the order may be made.

circumstances of the case, proceed to make an order (a) on the putative father for the payment to the mother of the bastard child, or to any person who may be appointed to have the custody of such child of the said recited Act (b), of a sum of money weekly, not exceeding five shillings a week (c), for the maintenance and education of the child, and of the expenses incidental to the birth of such child, and of the funeral expenses of the child, provided it has died before the making of such order, and of such costs as may have been incurred in the obtaining such order; and if the application be made before the birth of the child, or within two calendar months after the birth of the child, such weekly sum may, if the said justices think fit, be calculated from the birth of the child. The remainder of the section provides for the recovery of the money by distress, &c.; and see the Summary Jurisdiction Act, 1879, sec. 54.

Order
formerly
ceased on
marriage
of the
mother.

Prior to 35 & 36 Vict. c. 65, s. 3, an order made for the maintenance of an illegitimate child absolutely *ceased* on the marriage of the mother (7 & 8 Vict. c. 101, s. 5), and her husband is *prima facie* bound, under the Poor Law Act, 4 & 5 Will. 4, c. 76, s. 57, to maintain the child until it was sixteen, or the mother died, but now the order is not *ipso facto* void upon the mother's marriage; but when made whilst she is single, will on her marriage, continue alive, and be enforceable under an order of the justices. *Southeron v. Scott*, 50 L. J. M. C. 56; 6 Q. B. D. 518; 44 L. T. 522; 29 W. R. 666; 45 J. P. 423.

Order not
to be made
after
marriage
of mother.

A bastardy order cannot be made after the marriage of the mother (d), and who is at the time living with her husband, although the summons may have been taken out before the marriage, and service on the putative father was prevented by his defaults: *Tozer v. Lake*, 4 C. P. D. 322. Nor can application be made for an order of affiliation where the mother has married since the birth of such child, and is at the time living with her husband. *Stacey v. Lintell*, 4 Q. B. D. 291; 48 L. J. M. C. 108; 40 L. T. 553;

(a) See *R. v. Padbury*, 5 Q. B. D. 126, as to the form of the order and Bastardy Orders Act, 1880.

(b) The "recited Act" referred to in the section in 7 & 8 Vict. c. 101, s. 5, provides for the appointment of a guardian of the child in case the mother should be of unsound mind, in

gaol or prison, or under sentence of penal servitude, or her death, such guardian being appointed with his own consent.

(c) See *R. v. Kay*, L. R. 8 Q. B. 324.

(d) See 4 & 5 Will. 4, c. 76, s. 57, under which the husband is bound to maintain his wife's children born before wedlock.

27 W. R. 551. *Secus*, where living apart from her husband, see *R. v. Collingwood*, 12 Q. B. 681; and the liability will not cease on the woman returning into cohabitation with her husband. *Ex parte Grimes*, 22 L. J. M. C. 153; 17 Jur. 554.

An order of affiliation obtained *before* the marriage of the mother of the bastard child can be enforced after her marriage. The marriage does not now revoke the order, *Southeron v. Scott*, 6 Q. B. D. 518, although the husband is able to maintain the child: *Hardy v. Atherton*, 7 Q. B. D. 264; 44 L. T. 776; 50 L. J. M. C. 105; 29 W. R. 788; 45 J. P. 683. In that case Huddleston, B., remarked—"In *Southeron v. Scott* the point now before us was decided with one exception, viz.—that the question of the ability of the husband to maintain the child was not introduced. I have consulted Field, J., who says that the report does not quite convey what he intended to say, which was, that in view of the opinion of Lush, J., in *Stacey v. Lintell*, the question of the discretion of the justices upon the hearing the summons against the putative father to take into account the means of the woman's husband, must be considered an open question, but he entertains no doubt on the matter. I think the justices have *no* discretion as has been suggested." And Hawkins, J., remarked on the repeal of the proviso in sec. 5 of 7 & 8 Vict. c. 101, that no order of affiliation should remain in force after the marriage of the mother; and that since that repeal there was no ground for saying such orders were suspended or of no avail during the marriage of the mother. The only limits to their force are the child attaining thirteen, or sixteen in case of a special order, or its death. *Stacey v. Lintell* only decides that when a woman is married and living with her husband she can no longer be deemed a "single woman," having power to apply for an affiliation order under 35 & 36 Vict. c. 65. It is no authority for saying an order already made cannot be enforced after her marriage (a). Whether the justices have no dis-

Order made before marriage of mother may be enforced after marriage.

(a) In the above case of *Hardy v. Atherton*, Hawkins, J., made the following considerate remarks on the bastardy law, which will receive universal approval:—"I am glad that the order can be enforced notwithstanding the marriage of the mother and the ability of the husband to support the child, which by compulsion

of law (4 & 5 Will. 4, c. 76, s. 57) he has taken as a member of his family. And I am glad that it is so, for common sense and common humanity tell me that the putative father ought not to be relieved from liability to contribute his share of the maintenance of his own offspring, at the expense of the man who has

cretion but to enforce the order remains doubtful, the court being divided in opinion in *Davies v. Evans*, 46 L. T. 418; 9 Q. B. D. 238; Grove, J., held they had a discretion.

The appeal. Upon the putative father, within twenty-four hours after the adjudication and making of any order on him as such putative father, giving notice of appeal to the mother of the bastard child, and also within seven days giving sufficient security by recognizance or otherwise, for the payment of costs, to the satisfaction of a justice of the peace, he may appeal to the quarter sessions holden after the period of fourteen days next after the making the order for the county, city, &c., for which such petty sessions may have been held; and which court is thereupon to hear and determine the appeal, and award such costs as it may think fit. 7 & 8 Vict. c. 101, s. 4; 8 & 9 Vict. c. 10, s. 3, enacts that the condition of such recognizance shall be for the appellant's appearance at the sessions to prosecute his appeal, and of his trial of the appeal thereat, and payment of any costs as he may be ordered to pay: and having entered into such recognizance he is forthwith to give a second notice thereof *in writing* to the woman in whose favour the order had been made; and, unless he shall have entered into his recognizance before one of the justices (*a*) making the order, to one at least of such justices: in default of giving such notices the appeal will not be allowed. The notices may be sent by post.

married the woman who had the misfortune to bear it, and who possibly may have a hard struggle to support the family of which he is legitimately the head, and to whom the contribution of him who ought to bear it towards the one foreign member may be of real importance.

"I rejoice, too, to think that since the days of Q. Elizabeth our laws have been so far humanized, that a bastard child is no longer a mere thing to be shunned by an overseer, whose existence is unrecognised until it becomes a pauper, and whose only legitimate home is the work-house; that it is no longer permissible to punish its unfortunate mother with hard labour for a year, nor its father with a whipping at the cart's tail (see 18 Eliz.

c. 3, and Dutton's Justice of the Peace, p. 34); but that even an illegitimate child may find itself a member of some honest family, and that the sole obligation now cast upon its parents is that each may be compelled to bear his and her own fair share of the maintenance and education of the unfortunate offspring of their common failing."

The order may, at the discretion of the justices, be made to terminate at the marriage of the mother, as was the case in *Pearson v. Heys*, 7 Q. B. D. 260; 50 L. J. M. C. 124; 30 W. R. 156; 45 J. P. 730; 46 L. T. 681.

(*a*) The taking the recognizance is merely a ministerial act, the justice cannot re-inquire into the matter: *Ex parte Carter*, 24 L. J. M. C. 72; 24 L. T. 264.

The "forthwith" means with such delay only as may be satisfactorily accounted for: *Ex parte Lowe*, 3 D. & L. 737; 15 L. J. M. C. 99; *R. v. Gloucestershire*, 16 L. J. M. C. 57; or "with proper dispatch and without unreasonable delay:" Lord Coleridge, C.J., in *Hudson v. Hill*, 43 L. J. C. P. 273, 277; *R. v. Worcestershire*, 7 Dowl. P. C. 709, Coleridge, J.

Although the notice of appeal need not be in writing, but Notice of *may* be orally given, it is always advisable that it should be appeal. given to the mother in writing within the *twenty-four hours* after the *oral* judgment, and not the drawing up of the record. It must be specially noted the time is here limited to *twenty-four hours*; and the only exclusion of hours is when a Sunday intervenes. See *R. v. Middlesex JJ.*, 17 L. J. M. C. 111; *R. v. Huntingdonshire JJ.*, 19 L. J. M. C. 127. The notices may be posted, 8 & 9 Vict. c. 10, s. 3.

It is not necessary to state the grounds of appeal. *R. v. Derbyshire*, 1 New Sess. Cas. 411. The notice must be given personally, or served by leaving it at the mother's residence under such circumstances that it may be reasonably assumed she received it. *R. v. Nunn*, 1 New Sess. Cas. 49; *R. v. Yorks. N. R.*, *ib.* 574; 14 L. J. M. C. 91; 7 Q. B. 154; *R. v. Huntingdonshire*, 19 L. J. M. C. 127.

The notice to the mother of the appellant's entering into his recognizance need be no more than a bare notice, and without giving any details of the conditions. On such a notice the sessions cannot, excepting on the hearing of the merits, confirm the order. The recognizance would be returned to the sessions, and would show if the appellant had a *locus standi* in court. *R. v. Holborow*, 3 New Sess. Cas. 723; 14 L. T. 201.

In *R. v. Leeds (Recorder)*, 21 L. J. M. C. 171; 1 B. C. C. 50, the appellant had been adjudged the father of *twin* Notice where twin children and two orders. bastard children. A separate order had been made in respect of each child. Notice of appeal was given in each case, and a separate recognizance entered into to prosecute. *One* notice of the recognizance only was served on the mother, stating that he had entered into his recognizance on an appeal against an order "whereby he was adjudged to be the father of *two* bastard children," &c. This notice was held sufficient. See also as to the sufficiency of the information, *R. v. Oxfordshire*, 4 Q. B. 177; 12 L. J. M. C. 40. As to reasonable information, see *R. v. Denbighshire*, 9 Dowl. P. C. 509; 10 L. J. M. C. 79.

The death of the mother will exempt the appellant from giving the required notice. *R. v. Leicestershire JJ.*, 19 L. J. Where mother dead.

M. C. 209 ; 15 L. T. 132. See further as to the death of the mother affecting the appeal, p. 47, *post*.

Clerk to
Justices to
return re-
cognizance
to Clerk of
the Peace.

It will be the duty of the clerk to the justices to return the recognizance to the clerk of the peace for the county or borough at which the appeal is to be heard. Upon the appellant entering his appeal at the sessions he should ascertain that the recognizance has been so returned and lodged with the proper officer, and that it will be ready for production at the hearing.

Notices to
be proved
on hearing
appeal.

On the case being called on, the appellant must be prepared to prove the service of his notice of appeal upon the mother within the *twenty-four hours* after the oral decision of the justices, *Ex parte Johnson*, 3 B. & S. 947 ; 32 L. J. M. C. 193 ; *R. v. Middlesex*, 17 L. J. M. C. 111 ; *R. v. Huntingdonshire*, 19 L. J. M. C. 127 (*supra*) ; the entering into his recognizance within seven days after such decision ; and that he "forthwith" gave notice thereof to the mother : *Hudson v. Hill*, 43 L. J. C. P. 273, 277 ; *R. v. Holbourn*, 14 L. T. 201 ; 3 New Sess. Cas. 773 ; and should the recognizance not have been entered into before one of the justices making the order, that notice of the recognizance had been given to one such justice who had made the order (7 & 8 Vict. c. 10, ss. 3 & 4).

The guar-
dian's right
of appeal.

When the guardians have obtained an order against the putative father for the maintenance of the bastard child (35 & 36 Vict. c. 65, s. 8), he will, under sub-sec. 4, "have the same right of appeal against such order as in the case of an order obtained on the application of the mother."

This section gives the bare right of appeal ; but as by sec. 10 the Act is incorporated with 7 & 8 Vict. c. 101, the right of appeal will be subject to such notices of appeal, &c., as are provided for by that Act. The 8 & 9 Vict. c. 10 does not appear to be incorporated.

Interest
of the
mother
in the
appeal
by the
guardians.

The mother is equally, or perhaps more interested in the result of such an appeal than the guardians, inasmuch as an order made under the Act, and remaining in force, would, on her own application for an order of affiliation, be *prima facie* evidence that the man upon whom the order is made is the father of the child : see sec. 8, sub-sec. 5, of 35 & 36 Vict. c. 65.

And should the order be quashed on appeal, if made during the time she could take action, it would be to her prejudice on any application she might subsequently make. Upon the application, however, being made within the limited time allowed to her, it will be found in practice that

she would, in most cases, be the complaining party, and not the guardians; the guardians would of themselves only be called upon to take proceedings should the child become chargeable *after* the mother's time to obtain an order had expired. See *ante*, pp. 32, 33.

It has been previously noticed that where on the appeal the appellant retires from his case on a preliminary objection he had himself taken, and the order was thereupon confirmed by the sessions without hearing the evidence of the mother according to the language of the statute, the High Court held that such a decision by the superior tribunal was final: *R. v. Buckinghamshire*, 18 L. J. M. C. 113; 3 N. S. C. 500. And generally it may be said that a decision by the quarter sessions on appeal upon "*merits*" is final: see *ante*, p. 40, *R. v. Machen*, *R. v. Glynn*. But to be final there must be a hearing; a decision in the absence of the mother, who is not present in consequence of some accident or mistake of the day, is not final: see *ante*, p. 39; *R. v. Esser*, or *May*, and other cases.

Decision of sessions final on hearing.

There is, however, one other point of importance.

We have seen that no order can be made by the petty sessions in the first instance without the presence of the mother, and the corroboration of her evidence. After the order has been made, and the putative father has commenced his appeal, the statute is silent as to the course of procedure in case of her death; but by sec. 6, 8 & 9 Vict. c. 10, the evidence of the mother on the appeal is as imperative as at the petty sessions.

Death of the mother before appeal heard.

The only authorities on this point since the statute are judicial dicta of Pattison, J., and Hannen, J.; the one is in *R. v. Leicestershire*, 19 L. J. M. C. 209; 15 L. T. 132; where the woman died, and the appellant was held to be excused from the service of the notice of his recognizance on her, the duty imposed by the statute being rendered impossible by the act of God; and a mandamus was granted directing the sessions to hear the appeal. The difficulty was incidentally discussed in that case as to how the sessions could "hear" the appeal without the evidence of the mother, which under 8 & 9 Vict. c. 10, s. 6, the sessions "*shall hear*," and which must be corroborated. *R. v. Ravenstone*, 5 T. R. 373; and *R. v. Clayton*, 3 East, 58 (a), were referred to as holding that the examination of the mother was admissible

The admission of her deposition in evidence doubtful.

(a) "The decisions in these cases cannot be supported;" see 2 Stark. on Evid. 3rd ed. 438; note, 19 L. J. M. C. 210.

in evidence after her death; but Pattison, J., said he could not understand the ground of those decisions, and added, "There would, no doubt, be some person who could prove what had been stated by the mother *in the presence of the appellant*." The like suggestion was made by Hannen, J., in *R. v. Armitage*, 42 L. J. M. C. 16; L. R. 7 Q. B. 773. Following their lordships' suggestions, the clerk to the justices should be a witness to give evidence of what he heard the mother state "in the presence of the appellant" before the justices below. Should the sessions think it right to receive such evidence, the legal value of the testimony may be directly brought under consideration on a case reserved for the opinion of the High Court. It does not seem that the "suggestions" can be acted on as law.

The admission of such evidence would appear to be an indirect way of following the above cases of *R. v. Ravenstone* and *R. v. Clayton*, which Pattison, J., said he could not understand. Starkie, in his work on Evidence, 3rd edit. p. 438, says:—"They are decisions contrary to general principles, and the cases which the court relied upon for their decision are in direct opposition to them."

Maintenance may be reduced. The sessions may reduce the amount directed to be paid for the maintenance and education, or on account of the relief of the child, but not any other sums: 35 & 36 Vict. c. 65, s. 9.

Putative father a witness. The putative father may be a witness: 14 & 15 Vict. c. 99, s. 2.

Appeal may be abandoned. The appeal may be abandoned at any time before the hearing on the appellant giving notice thereof in writing to the mother, and paying or tendering to her all the sums due under the order, and her costs and expenses: 8 Vict. c. 10, s. 5.

Sum. Juris. Act. The Summary Jurisdiction Act, 1879, applies to the levying of sums to be paid under an order in any matter of bastardy, or of affiliation: Summary Jurisdiction Act, s. 54. See *R. v. Montgomeryshire*, 50 L. J. M. C. 95-6, Field, J.

Enforcing order pending appeal. As to the propriety of enforcing the order pending an appeal, although the appeal is no stay of the order, see *Kendall v. Wilkinson*, 24 L. J. M. C. 89.

Proceeding against soldiers. As to proceeding against a soldier for the maintenance of a bastard child, see sec. 139 of the Army Discipline Act, 1879.

AGRICULTURAL GANGS ACT, 1867.

30 & 31 Vict. c. 130.

A GANGMASTER, who hires "children" (under the age of thirteen), "young persons" (of the age of thirteen, and under eighteen), "women" (of above the age of eighteen), for employment in agricultural labour on lands not in his own occupation (sec. 1), cannot do so without obtaining a licence, sec. 5; and no person holding a liquor licence can have one granted to him: sec. 6.

Under sec. 7, two or more justices in petty sessions may grant such licences on proof of the good character and fitness of the applicant. To such licence may be a condition annexed, limiting the distances within which children employed are to travel on foot to their work; for non-compliance with this condition the gangmaster is liable to a penalty of ten shillings in each case.

It is only on the refusal to grant the licence, the party becomes "aggrieved," and can appeal to the next practicable court of general or quarter sessions; and such court may grant the licence. There is no general appeal upon convictions under the Act. As to the procedure on the appeal, see Baines' Act, 12 & 13 Vict. c. 45; *Ex parte Blues*, 5 E. & B. 291. The justices refusing the licence would be the respondents, and should be personally served with the notice of appeal. See *R. v. Bedfordshire*, *R. v. Cheshire*, *Curtis v. Buss*, and *S. C. Ex parte Curtis*, *infra*, p. 72.

ALEHOUSE—THE LICENSING ACTS.

9 Geo. 4, c. 61 (1828); 35 & 36 Vict. c. 94 (1872);
37 & 38 Vict. c. 49 (1874).

PORTIONS of the Act, formerly known as the Alehouse Act, The principal Act, still remain in force, notwithstanding the many alterations made in the governance of licensed houses for the sale of intoxicating liquors since 1828, when the 9 Geo. 4, c. 61 (now termed, under sec. 74, Act 1872, "The Intoxicating Liquor Licensing Act, 1828"), was passed. By that Act the licensing laws were consolidated, and the regulations for the sale of intoxicating liquors was brought absolutely under the control of the magistrates, and the foundation for the present licensing system was laid.

Licences
granted
under Act
1828 at
annual
special
meetings.

Throughout England generally annual licensing meetings (*a*) (Act 1828, sec. 1), are held for the granting licences "to persons keeping, or about to keep inns, alehouses, and victualling houses, to sell excisable liquors by retail, to be consumed on the premises," and at which meetings the justices not disqualified from acting are to grant licences to such persons as they may in the exercise of their discretion deem fit and proper (*b*).

When
justices not

A justice is disqualified from acting in the case of a licence to be granted in respect of a house in the profits of

(*a*) In Middlesex and Surrey the annual licensing meetings are to be held within the first ten days in March; and in the other counties on some day between the 20th August and the 14th September.

Section 2, Act 1828, provides for how the meeting shall be convened.

(*b*) Under the Wine and Beer-house Act, 1869, 32 & 33 Vict. c. 27, s. 8, all the provisions of the Act 1828 as to the grants of licences at the annual licensing meetings are made applicable to the grant of certificates for the sale by retail of beer, cider, or wine not to be consumed on the premises; subject, however, to the qualification that no applicant can be refused his certificate except:—

1. That he fail to produce satisfactory evidence of his character; see *Ex parte Morgan*, 23 L. T. 605, Q. B.; *R. v. Pilgrim*, L. R. 6 Q. B. 89; 40 L. J. M. C. 3; 23 L. T. 410; 19 W. R. 99.

2. That the house or shop to be licensed, or any adjacent house or shop, owned or occupied by the applicant, is a disorderly house or frequented by thieves, prostitutes, or persons of bad character.

3. That the applicant had previously held a licence which he had forfeited for misconduct; or had at any time previously been adjudged a disqualified person.

4. That the house is not duly qualified.

Should the justices refuse the certificate on the 4th objection, they are to specify in writing the grounds of their decision.

The justices, on refusing the licence, must state on which ground it has been refused: *R. v. Bedwelly*, 38 J. P. 807; *R. v. Sykes and another, Huddersfield J.J.*, 45 L. J. M. C. 39; 1 Q. B. D. 52; 33 L. T. 566; 24 W. R. 141; whether asked or not to do so: *R. v. Tarrey*, 42 J. P. 598.

The justices cannot amend the omission by affidavit on showing cause against a rule for a mandamus to hear and determine the application: *Ex parte Smith*, 3 Q. B. D. 374, S. C. *ex nom.*; *R. v. Chertsey (Surrey)*, 47 L. J. M. C. 104.

The justices are bound to hear evidence as to the necessity for a new house in the neighbourhood: *R. v. Lancashire*, L. R. 6 Q. B. 97; 40 L. J. M. C. 17; see also *Ex parte Bendall*, 42 J. P. 88; *R. v. Smith, ib.* 295; *R. v. Kent*, 41 J. P. 263.

The qualification of the annual value of £15 at the least of the house to be licensed for the sale of beer must be under one rating: see 3 & 4 Vict. c. 61, sec. 1; 33 & 34 Vict. c. 111. A house and shop may so communicate as to be included in one rate in the same parish: see *Preston v. Buckler*, L. R. 5 Q. B. 391; 39 L. J. M. C. 105; 22 L. T. 653;

which he is interested *beneficially*; but the being possessed of the mere *legal* interest will not disqualify him: Act 1872, sec. 60. qualified to grant a licence.

A justice knowingly acting when disqualified, is considered liable to a penalty of £100: *ib.*

A recorder, by virtue of his office, cannot act in any manner in the granting the licence; nor can he hear an appeal in any question respecting the licence. See *R. v. Deane*, 2 Q. B. 96; *R. v. Bristol Recorder* (Sir A. Cockburn), 24 L. J. M. C. 43; 4 E. & B. 265; 5 & 6 Will. 4, c. 76, s. 105. The recorder.

Beyond the limits of the jurisdiction of the metropolitan police courts (*a*), a metropolitan police or stipendiary magistrate may act as one of the justices empowered to grant or confirm licences, so far as regards any licensing district wholly or partly within his district. Act 1872, sec. 39; see also 2 & 3 Vict. c. 71, s. 14; 21 & 22 Vict. c. 73, ss. 3, 4; 26 & 27 Vict. c. 97. Metropolitan and stipendiary magistrates acting.

Justices of the Peace for the Cinque Ports are appointed under 50 Geo. 3, c. 36 (1811), s. 1; but by sec. 2 they were deprived of the power to act in the granting of "licences or certificates for licences to any victualler" within any Cinque Port or liberty thereof. By sec. 11 of 6 & 7 Will. 4, c. 105, the power to grant alehouse licences was conferred on the Cinque Port justices within the towns of Hastings, Sandwich, Dover, and Hythe, and the ancient town of Rye, and the non-corporate members thereof; and also within the towns of Deal, Faversham, Folkestone, and Tenterden, which shall not have justices assigned to them, by virtue of 5 & 6 Will. 4, c. 76, s. 98 (The Corporation Reform Act). Cinque Port justices.

18 W. R. 1104; *Garett v. Potts*, L. R. 6 Q. B. 86; 40 L. J. M. C. 1; 23 L. T. 554; 19 W. R. 127.

But where one portion of the premises was situate in an adjoining township, and the two portions were separately rated in each jurisdiction, and neither being of the required value of £15, although of that amount in the aggregate,—this was not a sufficient qualification as "one" rating: *Jennings v. Manchester*, 22 L. T. 412, Ex.

The right of appeal to the quarter sessions, which was held to have remained notwithstanding

the 74th sec. Act 1872: *R. v. Smith*, L. R. 8 Q. B. 146; 42 L. J. M. C. 46, has been taken away by sec. 27. Act 1874. As to the preliminary notices, see 32 & 33 Vict. c. 27, sec. 7; 33 & 34 Vict. c. 29, sec. 4, sub-s. 1; 35 & 36 Vict. c. 94, sec. 40; *R. v. Yorkshire W. R. (Drake's case)*, L. R. 5 Q. B. 33; 39 L. J. M. C. 17; 18 W. R. 259.

(*a*) This jurisdiction includes all Middlesex, and a radius around Charing Cross in Surrey, Hertford, Essex, and Kent, of fifteen miles.

By sec. 5, 18 & 19 Vict. c. 48, the above sec. 1, Act 1881, was so far repealed as it affected any place to which a charter of *incorporation* might be granted; but now by sec. 1 of the Cinque Ports Act, 1869, 32 & 33 Vict. c. 53, s. 5 of 18 & 19 Vict. c. 48, is to be read as if “the *grant of a court of quarter sessions*” had been therein referred to instead of the grant of incorporation; see also 20 & 21 Vict. c. 1.

Under sec. 5, 51 Geo. 3, c. 61, the justices of Essex may grant victualling licences within Brightlingsea as if it were in the county of Essex, and was not a liberty of the port of Sandwich; and by sec. 8, the justices of Kent are in like manner authorised to act within Beakesbourne and Grange (in Kent) part of the liberty of Hastings.

County
justices no
jurisdic-
tion within
the Cinque
Ports
under Act
1828.

The 8th sec. Act 1828 excludes the jurisdiction of the county justices from putting that Act in execution within any of the Cinque Ports or the two ancient towns, or any of the corporate or other members’ liberties thereof; but the justices of and for each of the principal Cinque Ports and two ancient towns (not being disqualified), and none other, are authorised to act within the same and each of the corporate members belonging or subordinate to such principal port or town, with the justices of each of such corporate member for the granting and transferring licences and hearing complaints as to offences against the Act, and in which cases the county JJ. could act.

Concurrent
jurisdic-
tion of
county
justices in
boroughs
abolished.

By sec. 38, Act 1872, it is enacted that after the passing of that Act, the county justices shall not for licensing purposes, *save in so far as* respects the power of appointing members of a joint committee, have *any jurisdiction* in a borough in which the borough justices have for such purposes concurrent jurisdiction. This positive language seems clearly to repeal the 7th sec. Act 1828. That section provided for the concurrent jurisdiction of the county justices where there should not be present at least two justices acting for a borough at a licensing meeting; and in such event the county justices might be present and act *with* the borough justice or justices for the purpose of granting or transferring licences and hearing complaints on offences under the Act. Where the borough charter contained no *ne intromittant* clause the county justices had concurrent jurisdiction in the borough. *R. v. Sainsbury*, 4 T. R. 457; *Brown v. Nicholson*, 28 L. J. M. C. 89; *Chandlish v. Simpson*, 30 L. J. M. C. 178.

Applica-
tions for

Should a certificate be refused at a licensing meeting, on a ground personal to one applicant, this would be no bar to an

application being made at an adjourned meeting by another for a licence in respect of the same premises. It would be otherwise if the first decision had turned on the unfitness or bad character of the house : *R. v. Yorkshire W. R., Drake's case*, 39 L. J. M. C. 17 ; L. R. 5 Q. B. 33 ; 18 W. R. 259. But the same person cannot as of right renew his application at the adjournment, unless, however, in the case of hardship, or surprise, as suggested by Cockburn, C.J. : *Ex parte Rushworth*, 23 L. T. 120.

An original notice may be given for the application for a licence twenty-one days before the adjourned meeting, when the requirements of sec. 7, 32 & 33 Vict. c. 27, the Wine and Beerhouse Act, 1869, were complied with ; *R. v. Yorkshire W. R., Drake's case (sup.)*. The notice under sec. 7 is now applied to all licences : Act 1872, s. 40, sub-s. 1 (a).

The Act 1872, sec. 37, creates a new jurisdiction called "the county licensing committee," or *confirmation* committee. It will consist of not less than three nor more than twelve members, and three will form a quorum. The committee will be "a standing committee."

In counties the grant of a *new* licence will not be valid unless it be confirmed by such "standing committee." It is this part of the section which defines the sole jurisdiction to the committee, which is to *confirm* the licence *newly* granted.

The committee is to be appointed annually, which is Appoint-

(a) Under sec. 7 of the Wine and Beerhouse Act, 1869, every person intending to apply for a certificate under the Act shall, twenty-one days at least before he applies, give notice in writing of his intention to one of the overseers of the parish, township, or place in which the house or shop in respect of which the application is to be made is situate, and to the superintendent of the police of the district (33 & 34 Vict. c. 29, s. 3) ; and shall, in such notice, set forth his name and address, and a description of the licence or licences for which he intends to apply, and of the situation of the house or shop in respect of which the application is to be made ; and in case of a house or shop not theretofore

licensed for the sale by retail of beer, cider, or wine, such person shall also, within the space of twenty-eight days before such application is made, cause a like notice to be affixed and maintained between the hours of 10 a.m. and 4 p.m. of two consecutive Sundays on the door of such house or shop, and on the principal door or on one of the doors of the church or chapel of the parish or place in which such house or shop is situate, or if there be no such church or chapel on some other public and conspicuous place within such parish and place. It will be sufficient if the notice be given twenty-one days before the adjourned licensing meeting : *R. v. Yorkshire W. R., Drake's ca. (sup.)*

a certificate or licence may be renewed at adjourned meetings.

Original application may be made at adjourned meetings.

The licensing committee in counties ; the confirming authority.

Notices for certificate and licence.

ment of the "Standing Committee." usually done at the October quarter sessions. More than one "standing committee" may be appointed for a county with a defined area of jurisdiction. And for the transaction of the business the sessions may make regulations as they may think fit. The clerk of the peace will act as the officer of the court as at quarter sessions.

Determination of questions by the county committee. As no provision is made in this Act, as there is in reference to the committee in boroughs directing how the committee are to vote, the determination of the county committee will be taken as under sec. 3, Act 1828, by the majority; and the licence be signed with official seal as under sec. 40, Act 1872.

No new, or removal of, licence in counties valid without confirmation. Under sec. 37, Act 1872, no new licence granted in counties will be valid unless confirmed by the standing county committee.

No order for the removal of a licence will be valid unless confirmed by confirming authority: Act 1872, sec. 50.

The licensing and confirmation committees in boroughs. In boroughs where there are ten justices or upwards acting in and for the borough at the time of the annual appointment, new licences will be granted by a committee who shall for such purpose perform all the duties, and be subject to all the obligations of licensing justices.

Such committee will be appointed annually, in the fortnight preceding the commencement of the period during which the general annual licensing meeting may be held, and will consist of not less than three or more than seven qualified members, and of those three will form a quorum.

No new licence granted in a borough valid unless confirmed. But the grant of a *new* licence by the borough licensing committee will not be valid unless confirmed by the *whole* body of borough justices, who would, if the Act had not passed, have been authorized to grant licences; or by a majority of such body present at any meeting assembled for the purpose of confirming such licences: Act 1872, sec. 37. So also as to a removal of a licence, sec. 50.

Where there are not ten justices in the borough a "joint committee." In boroughs where there are not the ten justices, new licences are to be granted by the qualified justices, but such licences will not be valid unless confirmed by a joint committee appointed in respect of such borough after the following manner (a):—

The joint committee for such borough is to consist of three

(a) As to the saving the privileges and rights of the Universities and St. Albans, see Act

1872, s. 72. See also Act 1828, s. 36; Act 1869, s. 20.

county justices and three of the borough justices. The county justices are to be appointed by the county licensing committee, and the borough justices on such joint committee are to be appointed by the borough justices, or a majority of them at a meeting assembled for that purpose. The quorum of such committee will be five, and the chair man will have the casting vote (*a*). Act 1872, sec. 38.

No objection can be made to any licence granted or confirmed under this section on the ground that the justices acting were not qualified (*ib.*).

Where by reason of there not being three qualified borough justices to form the quota under the preceding sec. 38, Act 1872, the deficiency in number is to be supplied by qualified county justices to be appointed by the county licensing committee, sec. 21, Act 1874. This section will counterbalance sec. 7, Act 1828. See *ante*, p. 52.

Although the original jurisdiction for the granting of the licence "to sell excisable liquors by retail to be drunk or consumed on the premises," under sec. 1, Act 1828, remains in the absolute discretion of the justices at their annual licensing meetings; yet in lieu of any appellate jurisdiction of the quarter sessions (which is now taken away) each grant of a new licence, or a removal of a licence, is subject to the confirmation of the "standing committee," whose decision is final: Act 1872, secs. 37, 38; *R. v. Rowell*, L. R. 7 Q. B. 490; 41 L. J. M. C. 175; 26 L. T. 732; *Hargraves v. Dawson*, 24 L. T. 428; and they may, and ought to take into consideration the number of licensed houses in the neighbourhood. *R. v. Lancashire, In re Tyson*, L. R. 6 Q. B. 97; 40 L. J. M. C. 17; 23 L. T. 461; 19 W. R. 204.

Absolute jurisdiction to grant a licence retained by justices, but restriction of the appellate jurisdiction.

The renewal or transfer of a licence is not subject to the confirmation of the committee; but in respect to them the full rights of appeal are preserved under the appellate clause 27, Act 1828. See Act 1872, sec. 42; Act 1874, sec. 26.

Appeals preserved as to renewals and transfers of licences.

No person can appear to oppose the confirmation of a grant of a new licence before the confirming authority, who has not appeared in opposition to the grant of the licence before the licensing justices: Act 1872, sec. 43. The party so opposing will not be restricted in his evidence to that which was before the licensing justices. It was so held

Procedure on confirmation of licence.

(*a*) Rules of procedure may be made by the joint committee: Act 1874, s. 25.

in reference to an appeal to the quarter sessions, and the same principle will apply under sec. 43. *R. v. Pilgrim*, L. R. 6 Q. B. 89 ; 40 L. J. M. C. 3. *Post*, p. 61.

Orders for the removals of licences.

For the removal of licences from one part of a licensing district to another part in the same district, or to another district in the same county, the following regulations will have to be observed :—

1. The application for an order sanctioning removal shall be made by the person desiring to be the holder of the licence when removed, and shall be made at a general annual licensing meeting, or any adjournment thereof, to the justices authorised to grant new licences in the licensing district in which the premises are situated *to which* the licence is to be removed.

2. The like notice must be given as for the grant of a new licence. See *ante*, p. 53, n.

3. A copy of the notice is to be served personally or by registered letter on the owner (*a*) of the premises from which the licence is to be removed, and the holder of the licence, unless he is also the applicant.

Restrictions on removal of a licence.

4. The justices to whom the application is made *shall not* make the order sanctioning such removal *unless* they are satisfied that no objection to such removal is made by the owner of the premises *to which* the licence is attached, or by the holder of the licence, or by any other person such justices shall determine to have a right to object to such removal.

JJ. same power as with a new licence.

5. Subject as aforesaid, such justices shall have the same power to make an order sanctioning such removal as they have to grant new licences ; but no such order shall be valid *unless confirmed* by the confirming authority of the licensing district. Section 50, Act 1872.

Qualification of premises by value for a licence.

Sec. 45, Act 1872, sets forth the annual value, as defined by sec. 47, required for premises to be licensed after the passing the Act 1872, and to which no licence under the Acts recited in the Wine and Beerhouse Act, 1869, authorising the sale of wine and beer for consumption thereon, is attached.

The following conditions must be satisfied :—

The premises, unless they be a railway refreshment room, shall be of not less than the following annual value :—

If situate within London, or its liberties, or parish

(a) The registered owner, under sec. 36, Act 1872.

subject to the jurisdiction of the Metropolitan Board of Works, or within the four miles radius of Charing Cross, or within the limits of a town containing a population of not less than 100,000 inhabitants, £50; or if the licence do not authorise the sale of spirits, £30 per annum.

If situate elsewhere, and within the limits of a town containing not less than 10,000 inhabitants, £30; if the licence do not authorise the sale of spirits, £20 per annum.

If elsewhere, and not within any such town, £15; or if not for the sale of spirits, £12 per annum.

The structural adaptation of the premises is also provided for, so that, in addition to the rooms used by the family, there shall be where the licence authorises the sale of spirits, two rooms, and if the sale of spirits be not authorised, one room, for the accommodation of the public.

This section does not apply to houses which had their licence as "public-houses" under the Act 1828, and before the passing the Act 1872. *R. v. Mason*, L. R. 8 Q. B. 235; 42 L. J. M. C. 35; 27 L. T. 847.

Sec. 47 defines the annual value to be ascertained in the same manner as the annual value is found under the Poor Law Assessment Acts.

The following persons are disqualified from holding a licence (a):—

1. A sheriff's officer executing the legal process of any court of justice. Act 1826, s. 16; see 11 Geo. 4, and 1 Will. 4, c. 64, s. 2.
2. Any person forging or tendering a forged certificate as authorised under the Wine and Beerhouse Act, 1869, knowing the same to have been forged. The Wine and Beerhouse Act, 1869, s. 11.
3. Every person convicted of felony (*b*), *ib.*, s. 7.
As to the sale of beer, see 3 & 4 Vict. c. 61, s. 7.
As to the sale of wine, see 23 & 24 Vict. c. 27, s. 22.
As to the sale of spirits, see 33 & 34 Vict. c. 29, s. 14.

(a) As to the owner's right to continue a licence forfeited, on the conviction of the licensee, see Act 1874, s. 15.

(b) The provision is retrospective, and was enforced against a

man who had for some years after his conviction conducted a licensed house respectably. *R. v. Vine*, L. R. 10 Q. B. 195; 41 L. J. M. C. 60; 31 L. T. 842; 23 W. R. 649; 13 Cox, 43.

4. On a second conviction for selling liquors without a licence, by order, disqualification for any term not exceeding five years :
On a third and subsequent offence, by order, disqualification for any term of years or for ever. Act 1872, sec. 3.
5. Every person convicted of permitting his premises to be a brothel. Act 1872, sec. 15.
6. Upon a second conviction of harbouring thieves, the licence is *ipso facto* forfeited, and the offender disqualified for two years (on the first offence the licence may be forfeited by order). The Prevention of Crimes Act, 1871, 34 & 35 Vict. c. 112, s. 10.
7. Where two convictions have been recorded against a licensee he will be disqualified for a term of five years from the date of the third conviction from holding a licence, and at the discretion of the court the premises may be disqualified (*for two years*).
8. But the licensee will still remain liable to any pecuniary penalty or any term of imprisonment to which he would otherwise be liable, or preclude the court from acting under any other section of the Act for disqualifying such person or premises for a longer period. Act 1872, sec. 30.

Disqualifi-
cation of
licensed
premises.

Further as to the disqualification of the premises, see *post*, p. 88.

Defini-
tions.

The licence.

The licence means a licence for the sale of intoxicating liquors granted by justices in pursuance of the Intoxicating Liquor Licensing Act, 1828, including a certificate of justices granted under the Wine and Beerhouse Acts, and including a licence for the sale of sweets, which is (by the Act) authorised to be granted in the same manner as if sweets were wine, and including a licence for the retail of spirits granted to a wholesale spirit dealer by the justices in pursuance of the Act (*a*). Act 1872, s. 74.

(*a*) A grocer, holding a wine-dealer's excise licence, granted under 6 Geo. 4, c. 81, s. 2, and for which the annual duty of £10 10s. is payable, is entitled without any certificate of justices, to sell by retail wine to be consumed off the premises. He is a "wine merchant" within sec. 73, Act

1872, holding a licence under the Commissioners of Inland Revenue, and not liable to be convicted under sec. 3, *ib.*: *Palmer v. Thatcher*, 3 Q. B. D. 346; 47 L. J. M. C. 54; 37 L. T. 784; 26 W. R. 314; as to a canteen licence, see The Army Discipline Act, 1879.

The “*new licence*” is defined by sec. 32, Act 1874, to mean The new licence. a licence for the sale of any intoxicating liquor granted at a general annual licensing meeting in respect of premises for which a similar licence has not before been granted.

This definition will become material when considering the operation of sec. 50, Act 1872, as to the “*removal* of a licence” from one district to another, and whether a removal may not in fact be the same as granting a “*new licence*.” There is no specific definition of a “*removal of a licence*.”

Sec. 74, Act 1872, defines a “*transfer of a licence*” to Transfer. mean a transfer made at Special Sessions under the Act of 1828, sec. 4.

And, “*renewal of a licence*” to mean a licence granted at Renewal. a general annual licensing meeting by way of renewal. See *Ex parte Tarbeth*, 31 L. T. N. S. 513.

The renewal of a licence must be made on a licence existing during the previous year, and to such a renewal the definition in sec. 74, Act 1872, refers. So where a new occupier of an inn was refused a transfer of a licence on the ground of his conviction for drunkenness; and three years afterwards, at the first licensing meeting after the owner could get possession of the house, he applied for a *renewal* of the previous licence, and was refused on the ground the neighbourhood did not require it. The sessions on appeal determined (without going into the merits) that they had no jurisdiction (*a*), as the application was as for a *new* licence; the Queen’s Bench held the sessions to be right. *Ex parte Tarbeth*, 31 L. T. 513, Q. B.; see also *R. v. Curzon*, L. R. 8 Q. B. 400; 42 L. J. M. C. 155; 29 L. T. 32; 21 W. R. 886; *Hargraves v. Dawson*, 24 L. T. 428, Q. B.

It is a new licence requiring confirmation where a licence is granted for a house which had previously only a wine and beer licence. *Marwick v. Codlin*, L. R. 9 Q. B. 509; 43 L. J. M. C. 169; 30 L. T. 719; 22 W. R. 823. New licence house.

The premises will be identified by description in the licence; but reasonable additions to the original premises may be made without affecting the licence. It is a question of fact for the justices whether they remain substantially the same and require only the renewal licence. *R. v. Raffles*, 1 Q. B. D. 207; 45 L. J. M. C. 61; 34 L. T. 180; 24 W. R. 536; *R. v. Smith*, 15 L. T. 178, Q. B. If a licensed house has additions made to it, it does not follow that the occupier Improvements made to licensed premises.

(a) See *Ex parte Curtis*, 26 W. R. 210; *S. C. Curtis v. Bass*, 37 L. T. 533; *R. v. Kent JJ.*, 41 J. P. 263.
3 Q. B. D. 13; 47 L. J. M. C. 35;

must give the notice provided for by Act 1829, sec. 7, as "for a house not theretofore kept as an inn."

The licence of an inn called Newill's Hotel, when granted to N., did not include a shop on the ground floor which was then let off. The licence was transferred to S. who took the whole of the premises and added the shop to the hotel. S. applied for a renewal of the licence at the accustomed time. The renewal was granted as for the premises "theretofore used as Newill's hotel, and lately in the occupation of N. and used by her under and for the purposes of the licence granted to her in renewal of which the licence is granted." S. appealed to the sessions against the insertion of this description; on a case, the Queen's Bench held the licence not irregular. *Stinger v. Huddersfield*, 33 L. T. 568.

Necessity
for any
new licence
rests with
justices.

It will be, of course, within the discretion of the justices to make a grant of any new licence; but it has been strongly remarked by the High Court that the justices ought in granting new licences to consider the number of the houses in the neighbourhood already licensed, and to refuse another licence if they consider another public-house unnecessary. The question arose as to whether evidence of that nature was admissible; and Hannen and Lush, JJ., granted a mandamus to hear it. *R. v. Lancashire*, L. R. 6 Q. B. 97; 40 L. J. M. C. 17; 23 L. T. 461; 19 W. R. 204; *R. v. Bendall*, 42 J. P. 88; *R. v. Smith*, *ib.* 295. See the definition of a "new licence" in sec. 32, Act 1874. These remarks are equally applicable to an application for the "removal" of a licence, and which in many instances may be equivalent to the granting a *new* licence.

Removal
and trans-
fers under
sec. 14,
Act 1823,
and sec. 50,
Act 1872.

It will be convenient here to consider the 14th section of the Act 1828 as to the "transfer" of a licence, and 50th section of the Act 1872 as to the "removal" of a licence. And first, as to Act 1828, of which sec. 14 provides for the "transfer" of a licence in case the licensed person should (1) die;—or (2) be rendered incapable of keeping an inn;—or (3) become bankrupt (or insolvent);—or (4) should any person so licensed, or his representatives remove from, or yield up possession of the licensed house;—or (5) the occupier, being about to quit the same, he should have wilfully omitted or should have neglected to apply for a continuance of the licence;—or (6) if any "house being kept as an inn, by any person duly licensed, shall be or be about to be pulled down, or occupied under the provisions of any Act for the improvement of the highways, or for any other public purpose;—or (7) shall be, by fire, tempest, or other unforeseen and unavoid-

able calamity rendered unfit for the reception of travellers and for the other purposes of an inn; it shall be lawful for the justices at special sessions in any of the above cases, *and in such cases only*, to grant to the heirs, &c., of the person so dying; or to the assigns of the person becoming incapable; or to the assignees in bankruptcy; or to any new tenant or occupier; or to the person to whom such personal representatives may have sold the licence of the deceased licensee, a licence to sell exciseable liquors by retail to be drunk and consumed in such house or the premises thereunto belonging; or to grant to the person whose house shall have been so pulled down or occupied for the improvement of the highways, or for any other purpose, or have become unfit for the reception of travellers or for other legal purposes of an inn, and who shall open and keep as an inn, some other fit and convenient house, a licence to sell exciseable liquors by retail to be drunk or consumed therein."

By sec. 50, Act 1872, licences may be "*removed*" from Act 1872, one part of a licensing district to another part of the same sec. 50. district; or from one licensing district to another licensing "*Removal.*" district in the same county.

This latter provision seems to be a large extension in general language of the *last alternative* in the above 14th section of the Act 1828.

In sec. 14 there is an express limitation to the *transfer* "*in such cases only*" as there mentioned; in the 50th section there is no such limit; but the word "*removal*" is there used as synonymous with "*transfer*."

The distinctions in the jurisdiction of the justices and the procedure in obtaining a "*transfer*," or a "*removal*" of a licence are material. Distinctions as to jurisdiction of JJ. in granting "*transfers*" and "*removals*" of licences.

The "*transfer*" may be made at a special sessions called together for the purpose of transferring licences: Act 1828, sec. 14; and a temporary transfer of a licence, lasting until the next ensuing special sessions, may be made at petty sessions in the discretion of the justices: 5 & 6 Vict. c. 44, sec. 1; and in certain cases of convictions of the licensee who has thereby become personally disqualified to hold the licence, the owner may obtain from a court of summary jurisdiction authority to carry on the business in the premises until the next licensing meeting. On a refusal to transfer the licence the applicant has reserved to him his right of appeal to the Quarter Sessions under Act 1828, sec. 27; Act 1872, sch. 2.

The "*removal*" of the licence can only be obtained at the

annual licensing meeting, held in the district in which the premises are situated to which the licence is intended to be removed, and is subject to the confirmation of the committee in like manner as a new licence. There is no right of appeal on the refusal to "remove" a licence.

Procedure on "transfer" of a licence. Notice of the intention to transfer a licence is to be served, by the person desiring the transfer, fourteen days prior to one of the special sessions appointed for the granting of such transfers, on one of the overseers of the parish, &c., in which the premises are situate in respect of which the transfer is to be made; and on the superintendent of police in the district. The notice is to be signed by the applicant or his authorised agent, setting forth the name of the person to whom it is intended to transfer the licence, with his place of residence and trade, or calling during the preceding six months to the notice. Act 1872, sec. 40.

As to the application being made by the *owner* in certain cases, see Act 1874, sec. 15; Act 1828, sec. 14; 5 & 6 Vict. c. 44, sec. 1.

Procedure on "removal" of a licence. Notice is to be given for the removal of a licence as if it were an application for a *new* licence, and in addition, a copy of the notice must be personally served upon, or sent by registered letter to the owner of the premises from which the licence is to be removed, and to the holder of the licence, unless he be the applicant.

The justices to whom the application is made *shall not* make an order sanctioning such removal unless they are satisfied that no objection to such removal is made by the owner of the premises *to which* the licence is attached, or by the holder of the licence, or by any other person whom such justices shall determine to have a right to object to the removal.

Subject as aforesaid the justices shall have the same power to make an order sanctioning such removal as they have to grant *new* licences; but no such order shall be valid unless confirmed by the confirming authority of the licensing district (*ante*, p. 56).

It would seem from the peremptory language of this section that upon an objection being made to the removal of the licence by those having a legal right to make the objection under the section, or whom the justices may determine have such right, the mere objection would be fatal to the making the order. But a mere consequential grievance, as that the interests of a neighbouring licensee may be injured, will not be sufficient. See *R. v. Middlesex*, 8 B. &

Ad. 938. Although such a person might be permitted to make a general objection that the neighbourhood would not require any additional licensed house. See sec. 43, Act 1872.

The practical effect of the two sections seems to be, that in the "transfer" of a licence, included in the terms of the alternatives of the 14th sec., Act 1828, the party applying for the transfer may still do so under that statute, and there will be reserved to him the right of appeal to the Quarter Sessions; and cases may arise of great importance calling for immediate action to protect the interests of the public and the licensee, and on which the Statute 1828 can be alone brought into operation. But where the application is for a "removal" of the licence from one house to another, and probably from one district to another, amounting in fact to the granting of a new licence, and under circumstances not included in the terms of sec. 14, Act 1828, then the proceeding must be under sec. 50, Act 1872, and the "removal" be subject to confirmation.

Sec. 42, Act 1872, impliedly repeals sec. 12, Act 1828, and the personal attendance of the licensee is not now required at the Licensing Sessions unless under notice of opposition.

Before the justices can entertain any objection to the renewal, a written notice of such objection, stating the grounds on which the renewal will be opposed (Act 1874, sec. 26), must be given to the licensee seven days before the annual licensing meeting. Act 1872, sec. 42.

But notwithstanding no ~~such~~ notice had been given, the justices may, upon an objection being made before them (and which usually in such case is made by the police), adjourn the grant to a future day, and specially require, by notice (a), the attendance of the licensee, when the case will be heard, and the objection considered, as if the notice had been in writing originally given: see *R. v. Farquhar*, L. R. 9 Q. B. 258; and subject to these restrictions, the grant of the renewals is in the discretion of the justices. Act 1872, sec. 42; Act 1828, sec. 1. See *R. v. Lancashire*, *R. v. Bendall*, *R. v. Smith*, ante, p. 60.

The justices renewed a licence on condition that the licensed premises should, before the next annual meeting, be improved and made of the annual value of £30, in

(a) This notice should state the grounds of objection as under Act 1874, s. 26.

default of which the licence would not be renewed. It was held the justices had no power to impose such conditions, which were null and void, as the house had been licensed under 9 Geo. 4, c. 61; and the sec. 45, Act 1872, as to the improving the premises did not apply. *R. v. Exeter* or *R. v. Mann*, L. R. 8 Q. B. 235; 42 L. J. M. C. 35; 27 L. T. 847; 21 W. R. 329.

Duty of JJ. to refuse renewal on ground shown.

Where a licensee had been fined more than a nominal sum for an offence under the Act, and the justices had refused to renew the licence, the Q. B. said the justices would have abandoned their duty had they not refused to renew the licence: *R. v. Birmingham JJ.*, 40 J. P. 132; on such a refusal the licensee would not be allowed to renew his application with rebutting evidence at an adjourned meeting. *Ex parte Rushworth*, 23 L. T. 120, Q. B.

Evidence may be by admission.

The evidence is directed to be taken on oath; but the justices should act on admissions in lieu of the oath: *R. v. Kent JJ.*, 41 J. P. 263.

Remedy where JJ. act without notice to licensee.

Where the justices have adjudicated on a renewal of a licence without a sufficient notice to the licensee, the remedy will be by mandamus to the Licensing Sessions to hear and determine the case after proper notice. *R. v. Farquhar*, L. R. 9 Q. B. 258. Or the licensee may appeal to the Quarter Sessions under sec. 27, Act 1828.

Mandamus or appeal.

Renewal not to be granted as of course.

But on such appeal the licensee will not be entitled to the renewal of the license as of course; but the sessions should hear and determine each case on its own merits: See *R. v. Kent JJ.*, 41 J. P. 263. Upon such an appeal it would be better for the party objecting to the renewal to give a counter-notice to the appellant, stating what the objections are on which he will rely at the Quarter Sessions.

Continuance of the licence pending appeal.

Under sec. 53, Act 1872, pending an appeal against the refusal to renew a licence, the Commissioners of Inland Revenue may grant a permit to the licensee to carry on the business.

Procedure on appeal on a refusal to renew.

For procedure on appeal on refusal to renew a licence, see sec. 27, Act 1828, *post*, p. 67.

Who may oppose a licence.

From the language of sec. 43, Act 1872, it would appear that "any person" may oppose the grant of a new licence in the first instance; and that no other person can appear and oppose the confirmation of the licence by the confirming authority either in the county or borough; and would seem that though the opposition is so far restricted, yet fresh and additional evidence may be given before the con-

firming authority (a). See *R. v. Pilgrim*, L. R. 6 Q. B. 89 ; 40 L. J. M. C. 3.

The justices should exercise their full discretion, sec. 1, The Act 1828, in each case judicially ; they cannot enforce rules hearing. which would exclude proper evidence, nor can they refuse to The hear parties having a right to be heard ; and if in pursuance justices should of such a rule they decline to hear counsel for the applicant, exercise a *mandamus* would go to compel them to hold an adjourned their dis- meeting to hear and adjudicate on the case. *R. v. Walsall*, cretion. 3 C. B. R. 100 ; 24 L. T. 111 ; see also *R. v. Sylvester*, 31 L. J. M. C. 93.

Where a judicial body are exercising a statutable power, Parties the parties interested have an implied common law right to be heard. See *Cooper v. The Wandsworth Board of Works*, Parties interested, right to be heard. 14 C. B. N. S. 180 ; 32 L. J. C. P. 185 ; 9 Jur. 1155 ; and the justices are bound to hear evidence tendered ; *R. v. Lancashire*, L. R. 6 Q. B. 97 ; 40 L. J. M. C. 17.

When the justices have in any manner heard and decided, When JJ. have heard and decided, and thereby exercised their discretion in the matter, the superior court will not interfere, however wrong they may have been in law or fact. See *R. v. Kent JJ.*, 41 J. P. 263 ; *R. v. Boteler*, 33 L. J. M. C. 103 ; *R. v. Middlesex*, *Slade's case*, 2 Q. B. D. 516 ; 46 L. J. M. C. 225 ; 36 L. T. 402 ; 25 W. R. 610 ; *R. v. Leicestershire*, 1 M. & S. 442.

Any person possessing an estate or interest in premises The owner of licensed house to be registered. licensed for the sale of intoxicating liquors, whether as owner, lessee, or mortgagee, prior or paramount to the occupier, is entitled and may claim to be registered as owner or as one of the owners of such premises ; but where two or more persons are jointly interested as owners, only one of such owners will be registered as representing the estate : Act 1874, sec. 29. It is important to the owner that he should have his name duly registered, for the protection of the licence to the house in case of misconduct on the part of the tenant and licensee. See Act 1872, sec. 56 ; Act 1874, sec. 15. The owner's name will also be endorsed on the licence : Act 1872, sec. 36.

"Occasional licences" may be granted by the Commis- Occasional sioners of Inland Revenue, whenever they may consider it licences. conducive to public convenience, comfort, and order, and with the consent of one justice (26 & 27 Vict. c. 33, sec. 20),

(a) The proceedings before the confirming authority will be subject to the rules and regulations to be made by the JJ. under sec. 43, Act 1872, if made within their jurisdiction : see *R. v. Pawlett*, 29 L. T. 390, Q. B. Costs may be granted, *ib.* sec. 43.

usually acting in the petty sessional division within which the place of sale is situate, to any person duly authorized to keep a common inn, alehouse, or victualling house, and who shall have taken out a proper excise licence to sell therein beer, &c., empowering him to sell the like articles for which he shall have taken out such licences for any such *other* place, and for and during such space or period of time *not exceeding three consecutive days*, at any one time as the commissioners may approve and the licence shall specify. But no such licence shall be granted for sale of any such articles on any Sunday, Christmas Day, or Good Friday, or any day appointed for a fast or public thanksgiving. 25 Vict. c. 22, sec. 13.

The hours for the sale of any beer, wine or spirits, under the occasional licence will extend from sunrise to one hour after sunset. In the case of any public dinner or ball, one justice may grant special licences: 26 & 27 Vict. c. 33, sec. 20. The Act 27 & 28 Vict. c. 18, sec. 5, gives power to refreshment-house keepers to obtain the occasional licence.

Special
occasional
licence for
licensed
premises.

The licensed victualler or keeper of a refreshment-house in which intoxicating liquors may be sold, or (Act 1874, sec. 5) a person licensed to sell beer (a) or cider by retail to be consumed on the premises, may have an occasional licence for special purposes relating to the closing the premises. These occasional licences will authorise the licensee to sell liquors only on *the licensed* premises. Act 1872, sec. 29.

Occasional
licence for
fairs and
races.

By sec. 18, Act 1874, any person selling or exposing for sale any intoxicating liquor in any booth, tent, or place within the limits of holding any lawful fair or races without an occasional licence authorising such sale, will be deemed (notwithstanding any Act to the contrary) to be a person selling or exposing for sale intoxicating liquor without a licence, and be punishable accordingly (b). But this section will not apply to a person selling liquors on premises duly authorised. See *Hayward v. Holland*, 28 L. T. 702; 21 W. R. 920.

As to fairs, see 5 & 6 Ed. 6, c. 25, sec. 6; 35 Geo. 3, c. 113; 6 Geo. 4, c. 81, sec. 11; 25 & 26 Vict. c. 22, sec. 12; 26 & 27 Vict. c. 33, sec. 21; Act 1869 (Wine and Beerhouse Act) 32 & 33 Vict. c. 27, sec. 20.

(a) The justices have now a "free and unqualified discretion." to refuse or grant a licence to sell beer *off* the premises: 45 & 46 Vict. c. 34 (passed 10th

August, 1882); repealing sec. 8 32 & 33 Vict. c. 27.

(b) For the penalty, see Act 1872, sec. 3.

Where a person sells the intoxicating liquor under an occasional licence, which has been obtained in an irregular manner under the sanction of a justice not usually acting in the required petty sessional division, still the person will be protected from penal consequences. *Stevens v. Emson*, 1 Ex. D. 100; 45 L. J. M. C. 63; 33 L. T. 821, C.A. Irregular licence.

There will be attached to each court a clerk to the licensing justices, whose duty it will be to attend the court, and keep the register of the licences containing the particulars of all licences granted in his district, the premises in respect of which they are granted, the names of the owners of the premises, and the names of the holders for the time being of such licences. The registers may be searched by any ratepayer, or owner of licensed premises, or holder of a licence in the district on payment of one shilling. The clerk to the licensing justices to keep the register of licences, and names of owners.

The police or excise officer may search without fee; and copies may be taken without interruption. Act 1872, sec. 36.

The register of licences kept by the clerk to the licensing justices will be evidence of the matters required by the Act to be entered therein. The copy of an entry in the register, certified by the clerk, and an endorsement on the licence will be admitted without proof of the clerk's signature. Act 1872, sec. 58. Register evidence.

The Appeal.

The appeal clauses, secs. 27, 28 & 29, of the Act 1828 are repealed (sch. 2, Act 1872), "excepting so far as they relate to the renewal or the transfer of licences." (See *ante*, p. 60, Act 1824, sec. 14; Act 1872, sec. 50.) Appeal clauses under Act 1828.

The 27th section enacts:—"That any person who shall think himself *aggrieved* by *any act* of any justice done in or concerning the execution of this Act may appeal against such Act to the next General or Quarter Sessions of the Peace holden for the *county* [*or place*] (*a*) *wherein* the cause of such complaint shall have arisen, unless such session shall be holden within twelve days next after such act shall have been done, and in that case, to the next subsequent session holden as aforesaid, and not afterwards; provided that such person shall give to *such justice* notice in writing of his intention to appeal, and of the cause and matter

(a) Now county only, see 5 & 2 Q. B. 96. And *supra*, p. 13; 6 Vict. c. 76, s. 105; *R. v. Deane*, *infra*, p. 68.

thereof, within *five* days next after such act shall have been done, and *seven* days at the least before such session ; and shall, within such *five* days, enter into a recognizance with two sufficient sureties, before a justice acting in and for such county [or place] as aforesaid, conditioned to appear at the said sessions to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded ; and the court at *such* session *shall hear and determine* the matter of such appeal (*a*), and shall make such order therein, with or without costs ; as to the court shall seem meet ; and in case the act appealed against shall be the refusal to [grant or] (*b*) *transfer* any licence, and the judgment under which such act was done shall be reversed, it shall be lawful for the said court to [grant or] *transfer* such licence *in the same manner as if such licence had been granted at the general annual licensing meeting, or had been transferred at a special sessions ;* and the judgment of the court shall be final and conclusive to all intents and purposes ; and in case of the *dismissal* of such appeal, or of the affirmation of the judgment on which such act was done, and which was appealed against, the said court shall adjudge and order the said judgment to be carried into execution, and costs awarded to be paid, and shall if necessary issue process for enforcing such order."

An original jurisdiction conferred on the Quarter Sessions.

The justices acting in the appellate court.

The section provides that no justice shall act, as such, on the hearing of the appeal whose act is appealed against ; and when the cause of complaint has reference to the refusal to renew or transfer a licence, whether as within the jurisdiction of a city or the county, the appeal will be to the county sessions. *R. v. Deane*, 2 Q. B. 96 ; *R. v. Cockburn*, *Bristol Recorder*, 24 L. J. M. C. 43 ; 4 E. & B. 265 ; 5 & 6 Will. 4, c. 76, s. 105. See *ante*, p. 13.

The party aggrieved.

It was held in *R. v. Middlesex*, 3 B. & Ad. 938, that the "party aggrieved" contemplated by 9 Geo. 4, c. 61, s. 1, must be a person immediately and not consequentially aggrieved. The owner of a neighbouring licensed house, for instance, had no legal grievance on which to appeal against a licence to another house near to his.

But in practice those holding adjoining licences and the inhabitants in the locality are allowed to appear, as aggrieved parties, to oppose the grant of a new licence ; and now also the removal of a licence from one district to another. And they

(*a*) See *R. v. Kent JJ.*, 41 J. P. 263.

(*b*) As to granting the licence, this enactment is repealed.

will certainly have their *locus standi*, if having been before the licensing sessions to oppose the granting the licence or removal of the licence, they appear before the confirmation committee under sec. 43, Act 1872.

Rules of Sessions, as well as those governing the procedure before the confirmation committee, must not be inconsistent with the Act, and impose an additional condition on the appeal; the appellant has a right to be heard when he has complied with the conditions in the Act of Parliament. *R. v. Yorkshire W. R.*, 2 Q. B. 705; *R. v. Pawlett*, L. R. 8 Q. B. 491; 29 L. T. 390.

The justices are the proper respondents under sec. 27, Act 1828, in an appeal against the refusal to transfer or renew a licence, and the service of the notice on them must be a personal service, or by leaving it at their respective place of abode. *R. v. Cheshire*, 11 A. & E. 131; *R. v. Bedfordshire*, *ib.* 134, overruling *R. v. Staffordshire*, 4 A. & E. 842; see also *Ex parte Curtis*, S. C. *eo nom.* *Curtis v. Buss*, 47 L. J. M. C. 35; 3 Q. B. D. 13; 37 L. T. 533; 26 W. R. 210, decided under the description of the justices as "the Court of Summary Jurisdiction;" where it was held the personal service was still necessary (see *post*, p. 72). The notice must be given to all the justices signing or forming the court and adjudicating. *Ex parte Blues*, 5 E. & B. 299; 24 L. J. M. C. 138. In fact, the requirement of the statute must be strictly complied with. *R. v. Oxfordshire*, 1 M. & S. 446. The modern regulation now being introduced into the appellate clauses of making the service on the clerk to the justices a service on the justices does not apply to an appeal in reference to the licence.

The sessions have no power to adjourn an appeal affecting a licence, but must, "at such sessions" at which the appeal has been made, hear and determine it: the question at issue calls for speedy decision. *R. v. Belton*, 1 Q. B. 379; see also *Bowman v. Blyth*, 26 L. J. M. C. 57.

Sec. 28, Act 1828, provides for the summoning of witnesses. And sec. 29 provides for the payment of the costs to the justices should the appeal be dismissed or abandoned, and which costs the court is "required to adjudge and order." Such order is, therefore, imperative; see *R. v. Yorkshire W. R.*, 31 L. J. M. C. 271; and payable by the party appealing, or who has given notice of his intention to appeal. And on non-payment the party may be committed to the common gaol until the sum awarded be paid. And in case the judgment appealed against be reversed, the court may order

Rules of Sessions and confirmation committee.

Notice of appeal to the justices as respondents.

No power to adjourn the appeal.

Summoning witnesses and costs.

the treasurer of the county or place in which the respondent justice shall have acted, to pay the cost and charges to which the justice may have been put.

Summary
proceed-
ings.

The Acts of 1872 and 1874 provide various punishments by summary proceedings for the punishment of offences under those Acts, whether committed by the licensed holder or other persons. The commission of some offences, or the repetition of them, by the licensee may result in their being recorded on his licence, and producing a forfeiture of the licence, or a disqualification to hold a licence; or may be a disqualification of the premises to be licensed.

These various offences will presently be specifically enumerated.

Excepting where otherwise expressly provided every offence under the Acts may be prosecuted, and the penalties and forfeitures recovered and enforced, as provided by the Summary Jurisdiction Act, 1848, 11 & 12 Vict. c. 43. Act 1872, sec. 51.

The Court
of Sum-
mary Juris-
diction.

The Court of Summary Jurisdiction, when hearing an information or complaint, other than the case where the offence charged is that of being found drunk in any highway or other public place, or any licensed premises, must be constituted of two or more justices in petty sessions, or a stipendiary magistrate, or some other officer authorised to act alone, and sitting alone, or with others in sessions. Act 1872, sec. 51, (1).

Description
of the
offence.

The offence may be described in the words of the Act, or in similar words, *ib. sub-s. (3)*.

Burden of
proof.

Any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany the description of the offence, may be proved by the defendant, but need not be specified nor negatived in the information; and if so specified or negatived, no proof in relation to the matter so specified or negatived will be required on the part of the informant or complainant. The defendant and wife are competent witnesses, *ib. sub-s. (4)*.

As to the introduction of the words "excuse or qualification"; see remarks of Blackburn, J., in *Roberts v. Humphreys*, L. R. 8 Q. B. 483; 42 L. J. M. C. 147; *Copley v. Burton*, 39 L. J. M. C. 141; L. R. 5 C. P. 489.

Scale of
punish-
ments

The Act 1872, sec. 51 (2), gives a scale of penalties on terms of imprisonments, with power to order a distress (*a*) in

(a) The order for distress is a condition precedent to the order for imprisonment: *Ex parte*

Brown, 3 Q. B. D. 545; 47 L. J. M. C. 108; 38 L. T. 682; 26 W. R. 757.

default of payment where the penalty including costs actually under Act
 adjudged exceeds £5 : and the person convicted may be im- 1872, sec.
 prisoned for any term not exceeding the following scale: 51 (2).
 that is to say, excepting where otherwise expressly provided
 by the Act :—

For any sum exceeding £5 but not exceeding £10,
 three months.

For any sum exceeding £10 but not exceeding £30,
 four months.

For any sum exceeding £30 but not exceeding £50,
 six months.

For any sum exceeding £50, one year.

It must, however, be noticed that the Summary Jurisdiction Scale
 Act 1879, has prescribed the period of imprisonment in under the
 respect of default of a sufficient distress to satisfy any sum Summary
 adjudged to be paid on conviction “under that Act, or under Jurisdic-
 any other Act whether past or future, notwithstanding any tion Act,
 enactment to the contrary in any past Act.” So far, then, as 1879, s. 5.
 the above sec. (51) is inconsistent with the Summary Juris-
 diction Act, 1872, sec. 5, sec. 51 (2), it must be taken as
 repealed. The scale of imprisonment where there is no suffi-
 cient distress, under the Act of 1879, is the following :—

Where the sum adjudged does not

Exceed 10s.	Seven days.
Exceeds 10s. and does not exceed £1	Fourteen days.
Exceeds £1 and does not exceed £5	One month.
Exceeds £5 and does not exceed £20	Two months.
Exceeds £20	Three months.

And such imprisonment shall be with or without hard
 labour.

The infliction of the imprisonment *with hard labour* under
 the Act of 1879 may be considered an equivalent in lieu of
 the extra term of imprisonment provided for under the
 former Act of 1872, sec. 51 (2).

The Summary Jurisdiction Act, 1879, sec. 5, will not
 affect the magistrate's jurisdiction to inflict imprisonment
 instead of a fine as specially provided for in the Acts 1872,
 1874; sec. 51, Act 1872, and the Summary Jurisdiction
 Act, 1879, refer to imprisonments in case of there being
 found no sufficient distress to satisfy the judgment.

The 52nd section, Act 1872, gives to any person feeling Appeal

against convictions. himself aggrieved by any order or conviction made by a court of summary jurisdiction under the Licensing Acts an appeal to the Quarter Sessions, subject to the following conditions and regulations :—

Limit of time. (1.) The appeal shall be made to the next (a) Court of Quarter Sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days after the decision of the court from which the appeal is made :

Notice. (2.) The appellant shall, seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal and of the ground thereof.

Recognizance. (3.) The appellant, immediately after such notice, shall enter into a recognizance with two sureties to try such appeal and abide the judgment and pay costs.

Discharge. (4.) Upon his recognizance he may be discharged if in custody.

Adjournment. (5.) The court may adjourn (b) the appeal, and upon the hearing may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court may also make such order as to costs to be paid by either party as it may think just.

Costs. On an appeal against a conviction by Cinque Port justices of a person for being found drunk on licensed premises (sec. 12, Act 1872), the appellant served his notice of appeal on the clerk to the justices, addressed generally to the justices of the Cinque Ports. Neither of the justices who heard the complaint or made the order received any notice of appeal. The Deputy Recorder (c), sitting at Sandwich, held the notice to be bad on the authority of *R. v. Bedfordshire*, 11 A. & E. 134 ; *R. v. Cheshire*, *ib.* 139, as not having been personally served on the justices, as well as being too indefinitely addressed, and declined to hear the case on the merits. The Q. B. D. held that the service of the notice was not sufficient ; and that the Deputy Recorder was not bound to hear the case if satisfied he had no jurisdiction. *Curtis v. Buss*, 3 Q. B. D. 13 ; 47 L. J. M. C. 35 ; 37 L. T. 533 ; *sub nom. Ex parte Curtis*, 26 W. R. 210.

Summary Reference should now be made, however, to the Summary

(a) "Next practicable court," 27, Act 1828, as in *R. v. Bolton*.
Sum. Juris. Act, 1879. sec. 32. *ante.*

(b) This will not affect sec. (c) The Author.

Jurisdiction Act, 1879, secs. 31, 32, as to an appeal against a conviction. Jurisdiction Act, 1879.

Although sec. 31 is applicable only in its procedure to appeals under that Act (1879) and future Acts, sec. 32 gives to the party appealing against a conviction the optional right to appeal as under sec. 31; but his former rights are preserved. *In re Clew*, 8 Q. B. D. 511; *R. v. Montgomeryshire*, 50 L. J. M. C.

The appellant in electing to proceed under the Act 1879. may avoid the objection raised in *Curtis v. Buss*, as sec. 31 specially provides that the service of the notice of appeal upon the clerk to the justices will be good service on the respondent justices.

For the form of procedure under that Act reference is made to the Act and sections under tit. "The Summary Jurisdiction Acts." The distinctions between the sections in the two Acts require to be noticed and carefully followed in accordance with the Act the appellant may elect to proceed under.

Offences.

The following are the offences under the Acts 1872, 1874, and the *maximum* penalties on conviction:—

Offences in reference to the Sale of Intoxicating Liquors.

1. For the sale of liquors without a licence or in an authorised place:

First offence £50, or imprisonment with or without hard labour one month.

Second offence £100, or imprisonment with or without hard labour three months, with disqualification for not exceeding five years from holding a licence.

Third offence, and any subsequent offence, £100, or imprisonment with or without hard labour for six months; and may, by order of the court by which he is tried, be disqualified for any term of years, or for ever, from holding a licence.

On conviction on a second or subsequent offence all intoxicating liquors on the premises may be forfeited. Act 1872, sec. 3; see 35 Geo. 3, c. 113, s. 1, a Police Act (still unrepealed); see *R. v. Hanson*, 4 B. & Ald. 319;

6 M. & S. 116; Lely and Foulkes, Licensing Acts, 83. If less than the *minimum* penalty appears on the conviction to have been imposed, the conviction is bad. *Whitehead v. R.*, 7 Q. B. 582; *R. v. Fletcher*, R. & R. 58. For excise penalties see, as to *beer*, 1 Will. 4, c. 64, s. 7; 4 & 5 Will. 4, c. 85, s. 17; *wine*, 23 Vict. c. 27, s. 19; all liquors, 6 Geo. 4, c. 81, s. 26.

2. Allowing a purchaser to consume drink on the licensed premises, or adjoining highway in evasion of his licence to sell liquor "not to be drunk on the premises:"

First offence £10. Second offence £20.

This offence may be recorded on the licence, if the court thinks fit: see sec. 13, Act 1874.

Act 1872, sec. 5.

Under this sec. it has been held that a bench outside the door of the house was part of the premises: *Cross v. Watts*, 32 L. J. M. C. 73; 13 C. B. N. S. 239; 11 W. R. 210. If the drinking takes place in the highway close to the licensed premises, and knowingly so to the knowledge of the licensee, in *evasion* of the licence (and this is a fact of which the justices will be the judges), the offence will be complete. In *Deal v. Scholfield*, 37 L. J. M. C. 15; L. R. 3 Q. B. 8, a constable was supplied with beer at an open window, about three yards from the highway, where he drank the beer, the window remaining open, and the servant at it. It was held a conviction on such evidence was wrong.

3. A like evasion, by carrying the liquor elsewhere than on the licensed premises for consumption.

The same penalties as under No. 2.

Act 1872, sec. 6. Recordable on the licence.

4. Selling spirits to children to be drunk on the premises:

First offence £1. Second offence £2.

Act 1872, sec. 7.

5. Not using the standard measure.

First offence £10. Subsequent offence £20. Forfeiture of measures used.

Act 1872, sec. 8. (See also the Weights and Measures Act, 1878; 41 & 42 Vict. c. 49.)

6. Making a communication with an unlicensed house of public resort, £10 a day.

Forfeiture of the licence, which may, under Act 1874, sec. 15, be transferred to the owner. Act 1872, sec. 9. See also the Metropolitan Police Act, 1839, 2 & 3 Vict. c. 47, s. 45.

7. Storing unauthorised liquors.

First offence £10. Subsequent £20. Forfeiture of liquor.

Act 1872, sec. 10.

See *Gill v. Bright*, 41 L. J. M. C. 22; 25 L. T. 591.

8. Neglecting to put up description-board.

The same penalties.

Act 1872, sec. 11. (Form of board, Act 1874, sec. 28.)

9. Permitting drunkenness (a), or violent, quarrelsome or riotous conduct on licensed premises; or sells intoxicating liquor to any drunken person:—

First offence £10.

Second and subsequent offence £20. Conviction may be recorded. (See Act 1874, sec. 13.)

Act 1872, sec. 13.

The word “knowingly,” which was in the repealed Act, 1828, is omitted here. See Archibald, J., in *Mullins v. Collins*, 43 L. J. M. C. 67; L. R. 9 Q. B. 292; 29 L. T. 838; 22 W. R. 297, as to the knowledge of the servant; see also *Redgate v. Haynes*, 1 Q. B. D. 89; 45 L. J. M. C. 65; 33 L. T. 779; *Bosley v. Davies*, 1 Q. B. D. 84; 45 L. J. M. C. 27; 33 L. T. 528.

A licensed person may be convicted for permitting drunkenness on his premises upon evidence that the person was found drunk at some distance from them. *Ethelstane v. Oswestry JJ.*, 32 L. T. 339, Q. B. D.

A licensed person cannot be convicted of “permitting drunkenness” by being himself drunk on his own premises. *Warden v. Tye*, 2 C. P. D. 74; 46 L. J. M. C. 111; 35 L. T. 852; *Lester v. Torrens*, 2 Q. B. D. 403; 46 L. J. M. C. 280; 25 W. R. 691.

10. Knowingly permitting his licensed premises to be the habitual resort of reputed prostitutes, whether the object be or be not prostitution, and allowing them to remain longer than necessary to obtain reasonable refreshment.

First offence £10.

Any subsequent offence £20.

Recordable on the licence.

Act 1872, sec. 14.

See the County Police Act, 2 & 3 Vict. c. 93, s. 16; the Town Police Clauses Act, 10 & 11 Vict. c. 89, s. 35; *Cole v. Coulton*, 2 E. & E. 695; 29 L. J. M. C. 125. The Prevention

(a) Under sec. 18, Act 1872, the licensee may refuse to supply a drunken person or admit him into his house. He may also have the assistance of a constable to remove him.

of Crimes Act, 1871, 34 & 35 Vict. c. 112, s. 10, as to harbouring thieves.

Decisions *before* the Act held it to be no offence if prostitutes stayed no longer than to take refreshments: *Greig v. Burdeno*, E. B. & E. 133; 27 L. J. M. C. 294; *Purkis v. Hurtable*, 1 E. & E. 780; 28 L. J. M. C. 221. And that they were there for the purpose of prostitution: *Belasco v. Hannant*, 3 B. & S. 13; 31 L. J. M. C. 225; these cases will not apply to the present section. See as to the burden of proof that the reputed prostitutes were assembling for the obtaining reasonable refreshment being on the defendants, see sec. 51, sub-sec. 4, Act 1872.

11. Being *convicted* of permitting licensed premises to be a brothel.

Each offence £20.

Forfeiture of license, and disqualification for ever.

Act 1872, sec. 15.

It is not necessary to prove indecent or disorderly conduct perceptible from the exterior. *R. v. Rice*, L. R. 1 C. C. R. 21; 35 L. J. M. C. 13.

The practice is to indict the offender for keeping the brothel; the distinction between the "keeping" a brothel, and "permitting" the premises to be a brothel, is too narrow to deprive the party of his right to be "convicted" by the trial by a jury. The keeping a brothel was always a common law offence triable at the Assizes or Quarter Sessions. The right of trial by jury cannot be taken away by implication. *Looker v. Halcombe*, 4 Bing. 183, Best, C. J. See Lely and Foulkes, Licensing Acts, 92, 2nd ed.

12. Knowingly harbouring or suffering any constable to remain on licensed premises whilst on duty, unless to restore order.

Supplying (without authority) liquor or refreshment to a constable on duty.

Bribing or attempting to bribe a constable.

First offence £10.

Second and subsequent offence £20.

Recordable on the license (Act 1874, sec. 13).

Act 1872, sec. 16. See sec. 51 (4).

The licensee may be convicted on the act of his servant supplying a constable with liquor. *Mullins v. Collins*, L. R. 9 Q. B. 292; 43 L. J. M. C. 67; 29 L. T. 838; 22 W. R. 297. In that case the licensee had no knowledge of the act of the servant; the knowledge was inferred from the circumstances under which the servant was left in charge.

In *Bosley v. Davies*, 45 L. J. M. C. 27 ; 12 B. D. 84 ; 33 L. T. 528 ; 24 W. R. 140, in respect to a charge of permitting gaming on the premises, it was held that either knowledge or constructive knowledge should be shown ; a connivance at gaming was held sufficient. *Redgate v. Haynes*, 1 Q. B. D. 89 ; 45 L. J. M. C. 65 ; 33 L. T. 779. See also, The Town Police Clauses Act, 10 & 11 Vict. c. 98, sec. 34 ; and the County Police Act, 2 & 3 Vict. ch. 93, sec. 16.

13 Suffering any gaming or unlawful game to be carried on in the premises : opening, keeping, or using or suffering his house to be opened, kept or used in contravention of the Act for the suppression of Betting Houses, 16 & 17 Vict. c. 119.

First offence £10.

Second and subsequent offence £20.

Act 1872, sec. 17. Recordable (see Act 1874, sec. 13).

See sec. 30, Act 1874.

A game called "puff and dart," in which each person contributes a certain sum towards the purchase of a prize to be given to the winner, is within sec. 17. *Bew v. Harston*, 3 Q. B. D. 454 ; 39 L. T. 233 ; 26 W. R. 915.

Playing for money's worth or money. See *R. v. Ashton*, 1 E. & B. 286 ; S. C., 22 L. J. M. C. 1 ; *Patten v. Rhymer*, 29 L. J. M. C. 189 ; 3 R. & E. 1 ; *Danford v. Taylor*, 20 L. T. 483 ; *Foot v. Baker*, 6 Scott, N. R. 301.

What are unlawful games, see 33 Hen. 8, c. 9, s. 11 ; 12 Geo. 2, c. 28, s. 2 ; 13 Geo. 2, c. 19 ; 18 Geo. 2, c. 24 ; 42 Geo. 3, c. 19 ; 8 & 9 Vict. c. 109. A game of skill is not unlawful : 8 & 9 Vict. 109, s. 1 ; such as chess, draughts, dominoes. *R. v. Ashton (supra)*. Cards or dice are not in themselves unlawful. *Allport v. Nutt*, 14 L. J. C. P. 272 ; 1 C. B. 989.

There should be evidence of either active or constructive knowledge of the offence on the part of the person charged : see *Mullins v. Collins*, and *Bosley v. Davies (supra)*. "Connivance" is sufficient : *Redgate v. Haynes*, 1 Q. B. D. 89 ; 45 L. J. M. C. 65 ; *Arards v. Dance*, 26 J. P. 437.

It was held in *Patten v. Rhymer (supra)* that private friends of the proprietor were prohibited from card-playing on the licensed premises : see also *Hare v. Osborne*, 34 L. T. 294, where it was held that there was nothing in sec. 30, Act 1874, exempting from liability the supplying liquors to private friends to render the conviction unlawful. But see *Cooper v. Osborne*, 35 L. T. 347, where a private friend was on licensed premises, after the closing time, and playing at

cards for money, and the court *quashed* a conviction, the case not being in contravention of the Licensing Acts. And see, on the repealed section 24, Act 1872, *Overton v. Hunter*, 1 L. T. N. S. 366.

Brandt on Games, p. 108.

15. Harboursing thieves on licensed premises.

For each offence £10, or four months' imprisonment.

Sureties of the peace in £20.

First offence, forfeiture of licence by order of the court.

Second offence, absolute forfeiture, and two years' personal disqualification, and the premises may be disqualified: 34 & 35 Vict. c. 112. The Prevention of Crimes Act, 1871, sec. 10; 10 & 11 Vict. c. 89, sec. 5.

Under the Habitual Criminals Act, 1869, sec. 10, a beer-house keeper was held to have committed an offence where he permitted an assemblage of reputed thieves at his house, although the meeting was merely for the purpose of raising a subscription in aid of the family of a person in custody, and for procuring the means of his defence. Such an assemblage might afford the opportunity or inducement to devise crimes, and would be within the Act. *Marshall v. Fox*, L. R. 6 Q. B. 370; 40 L. J. M. C. 142.

16. Keeping the licensed house open when ordered to be closed in case of riot.

Each offence £50. Act 1872, sec. 23.

17. Not exhibiting notice of the order for the exemption from closing.

Each offence £5. Act 1872, sec. 26.

Or exhibiting the notice without authority. Each offence £10. Same section.

18. The holder defacing, obliterating, or attempting to deface or obliterate any record of a conviction on his licence.

Each offence £5. Act 1872, sec. 34.

19. Refusing to produce the licence or order of exemption from closing, on demand by a justice, constable, or officer of inland revenue.

Each offence £10. Act 1872, sec. 64.

20. Keeping a *refreshment-house* (a) open for the sale of foreign wine after ten, or the time for closing.

(a) When the refreshment-house is *not* licensed, 1st offence, £10; subsequent offence, £20: Act 1872, s. 27.

First offence £10.

Any subsequent offence £20. Act. 1872, sec. 28.

See *Duffield v. Curtis*, 35 L. T. 853. A refreshment-house keeper, although without a wine licence, may not sell articles for consumption off the premises on Sundays.

A mere dancing-saloon is not a refreshment-house requiring a licence. *Taylor v. Orane*, 31 L. J. M. C. 252.

See also sec. 29 and Act 1874, secs. 18, 19, and 20, as to occasional licences.

See note to the next offence.

21. Any person who sells or exposes for sale on licensed premises, any intoxicating liquor during the time the premises should be closed in pursuance of the Act, or keeps open such premises for the sale of such liquors, or allows any such liquors, although purchased before the hours of closing, to be consumed on such premises.

First offence £10.

Any subsequent offence £20.

The conviction may be recorded. Act 1874, sec. 13.

Act 1874, sec. 9.

Sec. 28, Act 1872 (*sup.*), is a similar provision in respect to refreshment-houses. See *Duffield v. Curtis* (*sup.*), as to Sunday restrictions.

These provisions are subject to the exception in the 10th section (Act 1874), that nothing shall preclude the selling intoxicating liquor to be consumed on the premises at any time to *bonâ fide* travellers, or to persons lodging in the house. But no person having only a six days' licence shall sell to any one such liquor on a Sunday unless he lodge in the house.

The sections will not apply to railway travellers arriving at or departing from a station by railroad. See *post*, p. 84.

It will be a good defence on a charge for selling liquors during the prohibited hours, should the defendant fail to prove that the purchaser was in fact a *bonâ fide* traveller, if the justices are satisfied that the defendant truly believed the purchaser was a *bonâ fide* traveller; and further that he took all reasonable precautions to ascertain whether or not the purchaser was such traveller (*a*).

A person will not be deemed to be a *bonâ fide* traveller

(*a*) Should the traveller have given a false description of himself, he may be proceeded against under the 25th sec., Act 1872;

and the justices may direct proceedings to be taken against him: sec. 10, Act 1874.

unless the place where he lodged during the preceding night was at least three miles distant from the place where the liquor was supplied, calculating by the nearest public thoroughfare. Sec. 10, Act 1874. See *post*, p. 82.

Closing hours. All premises in which intoxicating liquors are sold by retail shall be closed as follows. Act 1874, sec. 3.

In the metropolitan district :—

On Saturday night—from midnight until one o'clock in the afternoon of the following Sunday.

On Sunday night—from eleven o'clock until five o'clock on the following morning.

On other days—from half an hour after midnight until five o'clock on the same morning.

If situate beyond the metropolitan district, and in the metropolitan *police* district (*a*), or in a town, or in a populous place (*b*) :—

On Saturday night—from eleven o'clock until half an hour after noon on the following Sunday (*c*).

On Sunday night—from ten o'clock until six o'clock on the following morning.

On the nights of other days—from eleven o'clock to six o'clock on the following morning.

If situate elsewhere :—

On Saturday night—from eleven o'clock until half an hour after noon on the following Sunday.

On Sunday night—from ten o'clock until six o'clock on the following morning.

On the nights of all other days—from ten o'clock until six o'clock on the following morning.

Such premises, wherever situate, shall (save where otherwise mentioned) be closed on Sunday afternoon from three, or half-past two, according as the hour of opening shall be one o'clock p.m., or half an hour after noon until six o'clock.

Christmas Day and Good Friday to be treated as Sundays. Act 1874, sec. 3.

An order of justices tending to restrict the times for

(*a*) The metropolitan district is—the City and liberties of London, any parish or place within the jurisdiction of the Metropolitan Board of Works, or within the area of a radius of four miles of Charing Cross : see. 32, Act 1874.

(*b*) A populous place as defined

by sec. 32, Act 1874, and means a place having not less than 1000 population ; and the declaration of a place “as populous” is in the discretion of the justices in licensing committee.

(*c*) The justices may vary the closing hours for Sundays, sec. 6.

closing the licensed house in contravention of the statute would be *ultra vires*. *Macbeth v. Ashley*, L. R. 2 H. Sch. App. 352; 30 L. T. 310.

Licences are granted to close the licensed houses one hour earlier at night when the duty will be six-sevenths of the duty the licensee otherwise would pay. Sec. 7, Act 1874. Early closing licences.

And under sec. 8, he may obtain a six days' licence as well as an early closing licence, at a remission of two-sevenths of the duty.

By sec. 9 an infringement of these hours by selling intoxicating liquors when prohibited, will render the licensee liable to a penalty not exceeding £10; and for any subsequent offence, not exceeding £20.

The "time" to be observed has now been specifically defined, and is to be understood throughout Great Britain as the "Greenwich mean time" (in Ireland the Dublin mean time). The Statutes Definition of Time Act, 1880, now overrides the remarks of Pollock, C. B., on the observance of time in different places; see *Curtis v. Marsh*, 28 L. J. Ex. 36. "Time."

The words in the section "sells or exposes for sale," and "opens or keeps open the premises for sale," have given rise to much discussion. The decision in *Cates v. South*, 1 L. T. 365, held that a reasonable time might be allowed a purchaser to consume the liquor bought before the closing hour; but under the above section (9), the licensee must clear his house at the exact time of closing. Sells or exposes for sale, or opens or keeps open the premises for sale.

To bring a case within the 9th clause there must be a sale of liquor in fact: *Overton v. Hunter*, 1 L. T. 366; *Petherick v. Serjeant*, 5 L. T. 48. And direct evidence must be given of a sale of liquor after the closing hour; a distinct opening after that hour; or some act on the part of the landlord, or his servant, which would show that the house was wilfully kept open for the purpose of inviting persons in. See Cockburn's, L.C.J., remarks in *Cates v. South*, 1 L. T. 365; see also *Brigden v. Heighes*, 1 Q. B. D. 330; 46 L. J. M. C. 228; 36 L. T. N. S. 696; *Tassell v. Ovenden*, 2 Q. B. D. 383; 46 L. J. M. C. 228. As to market days, see Act 1874, s. 26. As to occasional licences, see Act 1874, secs. 18, 19, 20.

A *draper and grocer* held a licence for the sale of wine and spirits not to be consumed on the premises. The grocery and drapery business was carried on in one shop and the wine and spirit business in an adjoining shop. During the day customers would pass from one shop to the other; but "Grocer's licence." Closing of house.

after ten o'clock, all communication was closed by means of a partition, and the shutters were put up. There only remained the private communication with the house. The grocery and wine department was in darkness, but the drapery portion was kept open. It was held there was no evidence on which to support a conviction for keeping the house open for the sale of liquor after ten o'clock. *Brigden v. Heighes*, 1 Q. B. D. 330; 45 L. J. M. C. 58; 34 L. T. 242; 24 W. R. 272.

To obtain a conviction there should be some evidence that the liquor was in fact sold, or that it was exposed for sale. See *Tasell v. Ovenden*, 2 Q. B. D. 383; 46 L. J. M. C. 228; 36 L. T. 696; 25 W. R. 692; *Overton v. Hunter*, 1 L. T. 366; *Petherick v. Serjeant*, 5 L. T. 48; *Cates v. South*, 1 L. T. 365.

Entertain-
ing private
friends.

Sec. 30, Act 1874, enacts that no person keeping a licensed house will be liable to any penalty for supplying intoxicating liquors, after the hours of closing, to private friends *bonâ fide* entertained by him at his own expense.

A dinner-party had been given by one P. to nine friends at a licensed house, and after the time for closing, the landlord invited the guests as *his* private friends to partake of claret at his expense. The nine persons were proceeded against under sec. 25, Act 1872, as being found on licensed premises (*a*), not being inmates, servants, lodgers, *bonâ fide* travellers, or "that otherwise their presence on the premises was not in contravention of the provisions of the Act with respect to the closing of licensed premises." The parties were convicted, and the conviction was upheld, on the ground that at the hour of closing the landlord could not convert his customers' guests into "private friends." *Corbett v. Haigh*, 28 W. R. 430, 5 C. P. D. 50, wrongly citing *Cooper v. Osborn*, 35 L. T. 347, D. C. A., as *Cooper v. Askew*.

In *Cooper v. Osborn* (*sup.*) there had been an annual local feast held in the town on a Sunday. The inn had been frequented by more people than usual on that day. At 10 minutes to 11 p.m., the appellant caused all to leave his house, with the exception of a party consisting of the appellant and his wife, his brother-in-law, a young lady (a visitor), and four or five others, neither travellers nor inmates. These sat down to supper, and had spirits and wine at the proprietor's expense. The house was closed

(a) Under sec. 25, Act 1872, a person found on licensed premises when not under the statutable

privileges is subject to a £2 penalty: see also Act 1874, sec. 17.

and there was no proof that any wine or spirits were sold after the prohibited hours. Cockburn, C. J. (Hill and Blackburn, JJ., agreeing), said: "Here is a publican who is found on a Sunday evening entertaining at supper a few friends who had been attending a feast in the neighbourhood. The justices have found, as a fact in the case, that there was *no sale* of spirits. The case, then, is really at an end; and I must say that it is a case in which there was not the slightest shadow of a pretence for such a conviction. The inn-keeper was giving a private entertainment to his own guests, which he had a perfect right to do."

These two cases are certainly in conflict, as the justices in *Corbett v. Haigh* found as a fact that the conduct of the landlord was *bonâ fide*, so that no question as to the *evasion* of the Act was raised. The only distinction apparent in the cases is, that in the one there had been a private dinner-party, and there was a mere change of entertainment, on the time for closing arriving, from the party being colourably transferred as the guests of the customer to their becoming the guests of the landlord and which was considered a continuance of the customers' entertainment in another form; but in the other case, a selection had been made from the general company, by the proprietor, of personal friends and relations independently of any previous entertainment. Each case as it may arise must depend on its own peculiar circumstances, and on which the justices will exercise their discretion. These two authorities will be their guide in coming to a conclusion on this particular question. See also Willes, J., remarks in *Copley v. Burton*, 39 L. J. M. C. 141.

Prior to the Act 1872, the burden of proof that the customer was not a *bonâ fide* traveller rested with the *Bonâ fide* informer. Jervis's Act, 11 & 12 Vict. c. 43, sec. 14, was held, not to throw the burden of proof on the person taking advantage of it. *Davis v. Scarce*, L. R. 4 C. P. 172; 38 L. J. M. C. 79. travellers.

Sec. 51, sub-sec. 4, Act 1872, throws the burden of proof on the defendant that the person served with the liquor was a *bonâ fide* traveller: see *Roberts v. Humphreys*, L. R. 8 Q. B. 483; 42 L. J. M. C. 147; 29 L. T. 387; 21 W. R. 885. Sub-sec. 4, sec. 51, was passed to meet the prior decisions, and to shift the burden of proof. Sec. 10, Act 1874, further confirms the onus of proof resting with the defendant; but protects him against any deceit or misrepresentation of the purchaser that he is a *bonâ fide* traveller, and makes it a good defence if he took reasonable precautions to ascertain that the purchaser

was a *bonâ fide* traveller; or that the justices are satisfied he truly believed he was such traveller. It is a question for the justices to decide on all the circumstances whether the customer supplied with the liquor was a traveller. *Atkinson v. Sellers*, 5 C. B. N. S. 442; 28 L. J. M. C. 12. In that case, and in *Taylor v. Humphreys*, 17 C. B. N. S. 549; 34 L. J. M. C. 1; 11 L. T. 376, the court approved the principle, as now enacted in Act 1874, sec. 10, that if the publican believed or had reason to believe, when he supplied the liquor, he was supplying it to a traveller, whether he be on a journey of business or pleasure, he ought not to be convicted. The circumstances under which the customer was admitted and supplied, would be matter for consideration in deciding whether the publican had reason to believe, and did believe, he was a traveller, either when he admitted him or whilst he afterwards supplied him; such as, whether he was a neighbour or a stranger, whether he delayed longer or took more than was consistent with the need of refreshment. The distance would also be relevant; but no rule could be laid down for a defined distance, as that which would be short for the vigorous might be long for the weakly. Per Erle, C. J.

Distance
for the
customer
to have
travelled.

Sec. 10 limits the distance the customer should have travelled to beyond three miles from the place where he slept the previous night. Such distance, however, is to be measured by the nearest public thoroughfare; so that where there is a public ferry across a navigable estuary—as the Southampton Water—which could be used by any person paying a toll, the distance between the house where the alleged traveller lodged on the one side of the water, and the inn where he was supplied with liquor on the other, will be calculated as by the ferry, and not by the roadway, which would be a considerable distance. *Coulbert v. Troke*, 1 Q. B. D. 1; 45 L. J. M. C. 7.

Railway
Stations.

On a charge against a licensee who kept a refreshment room communicating with a railway station, he had a notice up, cautioning those who were not travellers, and as to their penalties on taking refreshments during prohibited hours, and the customers were asked if they were travellers. Notwithstanding these precautions, (a) four persons, residents, but strangers to the licensee, were served with refreshments,

(a) A person falsely pretending to be a traveller or lodger, or gives a false name or address, may be fined for each offence not exceed-

ing £5: Act 1872, sec. 25: see also Act 1874, sec. 10, under which the magistrate may direct a prosecution.

and then went away by train; the sessions found they were not "*bonâ fide* travellers." On a case stated the conviction was quashed; and the court intimated that any similar conviction would in future be quashed, *with costs*. *Copley v. Burton*, L. R. 5 C. P. 489; 39 L. J. M. C. 141; 22 L. T. 888.

As to the exemption of railway travellers, see the Public House Closing Act, 1864, 27 & 28 Vict. c. 64, sec. 10; *Fisher v. Howard*, 34 L. J. M. C. 42; *Peaché v. Colman*, L. R. 1 C. P. 324; 35 L. J. M. C. 118.

22. Forging a magistrate's certificate.

Each offence, £20; or six months' imprisonment.

Disqualification for a wine and beer licence. Licence transferable to owner.

Wine and Beer-House Act, 1869, s. 11.

Act 1874, s. 15.

23. Refusal to admit a constable.

First offence, £5.

Subsequent offence, £10.

Recordable on the licence.

Act 1874, s. 16.

24. Adulteration. (See that tit. *infra*).

Sec. 24. The adulteration of liquors.

Recordable on the licence.

Act 1874, secs. 13, 14.

This offence is also indictable at Common Law: 4 Step. Black., 5 ed. 349; 2 Chit. Cr. Law, 556;—and actionable: Rolls Ab. 95; see *Fitzpatrick v. Kelly*, 42 L. J. M. C. 132; *Roberts v. Egerton*, 30 L. T. 633; *Pope v. Tearle*, 43 L. J. M. C. 129; L. R. 9 C. P. 499. As to Excise penalties, see 56 Geo. 3, c. 58, sec. 2; 10 Vict. c. 5; 25 Vict. c. 22, sec. 20; *Attor.-Gen. v. Lockwood*, 9 M. & W. 378; Aff. in error, 10 M. & W. 464.

25. Allowing seditious meetings on licensed premises—£5.

Forfeiture by order of court.

39 Geo. 3, c. 79, sec. 14.

57 Geo. 3, c. 19, sec. 29.

Offences by Persons not Licensed.

1. Being drunk in a public place:

First offence, 10s.

Second offence, with twelve months, £1.

Third or subsequent offence, with same period, £2.

Act 1872, s. 12.

2. Being disorderly drunk in a public place, whether a

building or not, or drunk while in charge of a carriage, horse, cattle, or steam-engine, in a highway or public place ;

Or drunk when in possession of firearms ;

May be apprehended.

Penalty, £2 ; or imprisonment with or without hard labour, one month.

On committal for non-payment of any penalty under this section, hard labour may be ordered.

Act 1872, s. 12.

3. A person who is drunken, violent, or disorderly on licensed premises ; or whose presence on the premises would render the licensee liable to a penalty (a), and not quitting on request of the licensee or his agent or servant, or any constable—penalty, £5.

On non-payment, imprisonment with hard labour.

Act 1872, s. 18.

4. (1) Being found on premises where liquors are illegally sold—£2.

(2) Refusing to give name and address under such circumstances—£5.

Act 1874, s. 17.

5. Refusing to quit licensed premises when requested. For each offence, £5 ; on non-payment, imprisonment with hard labour.

Act 1872, s. 18.

6. Being found on licensed premises during closing hours. Each offence, £2.

Act 1872, s. 25.

(See cases, *ante*, under “ Offence ” No. 1. Sec. 28, 1872 ; sec. 10, Act 1876.)

7. Falsely pretending to be a traveller or lodger.

Each offence, £5.

Act 1872, s. 25 ; as to directing a prosecution, see Act 1874, s. 10.

8. Giving a false name and address to a constable.

Each offence, £5.

Act 1872, s. 25.

9. Allowing liquor to be drunk in refreshment houses not licensed for sale of liquor during the closing hours—

First offence, £10 ; subsequent offence, £20.

Act 1872, s. 27.

Sec. 13 of Act 1874 contains a general provision as to the

recording of convictions; and it is there enacted, that where any licensed person is convicted of any offence against the principal Act (1872), which by such Act was to have been, or might have been, endorsed upon the licence, or of any offence against "this Act" (1874), the court, before whom any offender is brought, shall cause the register of licences, in which the licence of the offender is entered, or a copy of the entries therein relating to the licence of the offender, certified in manner prescribed by the 58th sec. of the principal Act (1872), *to be produced in court* before passing sentence, and after inspecting the entries therein in relation to the licence of the offender, or the copy thereof, the court shall declare, *as part of its sentence, whether it will or will not* cause the conviction for such offence to be recorded on the licence of the offender, and if it decide that such record is to be made, the same shall be made accordingly.

Such a recording of the offence is part of the conviction, and subject to appeal, and the *direction* that the conviction is to be recorded, for the purposes of the Act 1872, is equivalent to a requirement that the conviction is to be recorded.

The procedure on the recording of a conviction (sec. 55, Act 1872) is:—

1. The court will require the accused to produce his licence.
2. If the person is convicted (after an inspection of the register of the licence), the conviction will be endorsed on the licence.
3. The clerk to the justices will enter the particulars of the conviction in the register of licences kept by him.
4. If the clerk of the court be not the clerk to the licensing justices, a notice of such conviction shall be sent to him forthwith.
5. Where such conviction shall have the effect of forfeiting the licence, or of disqualifying any person or premises for the purposes of the Act, the licence shall be retained by the clerk to the court, and notice of such forfeiture or disqualification shall be sent to the licensing officer of the district, and if the clerk to the court is not the clerk to the licensing justices, to such last-mentioned clerk together with the forfeited licence.

The recording an offence a part of the conviction and subject to appeal.
Procedure in recording conviction.

By sec. 56, Act 1872, where the tenant of licensed premises

is convicted of an offence, *the repetition* of which may render the premises liable to be disqualified from being licensed for any period, the clerk to the licensing justices, as part of his duty, shall give notice of every such conviction to the owner^(a) of the premises whose name will be on the license, and on the register kept by the clerk (sec. 36, Act 1872); and see also sec. 29, Act 1874.

Recording more than one conviction on the same day.

Where more than one conviction is made on the same day, the court may order one, or some only to be recorded on the license. Act 1872, sec. 57.

Evidence.

A conviction under the Act will not be receivable in evidence after five *(b)* years to subject the party to an increased penalty or any forfeiture. Act 1872, sec. 32.

Limitation of effect of order.

This section will only apply to a "penalty" or "forfeiture," and not to a disqualification of the licensee or premises.

Omission to make record.

Where the conviction has been omitted to be recorded, and it be otherwise proved to the court, the person or premises occupied by him will be subject to the penalty attached to the order as if the order had been recorded. Act 1872, sec. 33.

Judgments and register.

The registers of licences kept in pursuance of the Act and endorsements of licences will be received as evidence of the matters recorded therein. Act 1872, sec. 58.

The following is a summary of the convictions which may be recorded :—

1. Allowing the buyer to consume liquor in evasion of the licence. Act 1872, sec. 5.
2. Conveying liquor off the premises in evasion of the licence. Act 1872, sec. 6.
3. Permitting drunkenness, or selling an intoxicating liquor to any drunken person. Act 1872, sec. 13.
4. Harboursing prostitutes. Act 1872, sec. 14.
5. Harboursing a constable, supplying refreshments to a constable when on duty, or bribing him. Act 1872, sec. 16.
6. Permitting gaming or unlawful games on the premises. Act 1872, sec. 17.
7. Selling as pure an adulterated article. Act 1874, sec. 17.
8. Selling liquor during the closing hours. Act 1872, sec. 28.

(a) The notice to the owner is to be sent by a registered letter : sec. 70, Act 1872.

(b) Under the repealed Stat. 33 & 34 Vict. c. 29. s. 5, the limitation was three years.

9. Refusing to admit a constable on the licensed premises. Act 1864, sec. 16.

Disqualification of Premises.

Besides the liability of the licensee in regard to his status to hold a licence (independently of other penalties he may incur), *the premises* may be rendered disqualified for having a licence attached to them. This will happen after the licensee has had two convictions recorded on his licence, when the premises will, unless the court in its discretion otherwise orders, be disqualified from receiving a licence for two years from the date of the third conviction. Act 1872, sec. 30.

Forfeiture of a licence on repeated recorded convictions, and disqualification of the premises.

As regards the conviction of persons licensed after the passing the Act 1872 (sec. 31), the second and every subsequent conviction recorded on the licence will also be recorded in the register of licences against the premises.

By sub-sec. 2, after four convictions (whether of the same person or not) within five years so recorded, the premises will be disqualified for one year.

And by sub-sec. 3, if the licences of two such persons in respect of the same premises are forfeited within two years, the premises will be disqualified for one year from the date of the last forfeiture.

When two convictions have taken place within three years under 34 & 35 Vic. c. 112, s. 10, for harbouring thieves in respect of the same premises, whether the persons convicted were the same or not, the court "shall direct" that, for one year from the date of the last conviction, no licence be granted in respect of such premises: and if granted it will be void.

When a tenant is convicted of an offence against the Act, and such offence is one the repetition of which may render the premises liable to be disqualified from receiving a licence for any period, the clerk of the licensing justices is to serve a notice of every such conviction on the owner of the premises (Act 1872, sec. 56), whose name will have been endorsed on the licence (*ib.* s. 36), or whose name has been entered on the register as owner under Act 1874, s. 29. Copies of those entries will be evidence. Act 1872, s. 58.

Notice to the owner of convictions.

Upon the owner (if not also the occupier) of the premises being served with such notice, he may appeal against such order to the petty sessions, of the holding of which he will have had notice, under the following grounds:—

Appeal to the petty sessions.

1. That he has had no notice of a prior conviction rendering the premises disqualified from receiving a licence.

2. That the tenant held under a contract made prior to the commencement of the Act 1872; and that the owner could not legally have evicted him in the interval between the commission of the offence in respect of which the disqualifying order was made and the receipt of the notice of the immediately preceding offence.

3. That notwithstanding he had legal power to evict the tenant, he could not with reasonable diligence have exercised that power in the interval which occurred between the notice and the second offence.

On the hearing the court may cancel the order. Act 1872, s. 56.

This being a special appeal granted to the petty sessions, there will be no appeal on it to the quarter sessions.

ANIMALS.

The first Acts for the protection of cruelty to animals were passed in the sessions of 5 & 6 Will. 4 (c. 59), and 7 Will. 4 & 1 Vict. (c. 66). Both those Acts were repealed by 12 & 13 Vict. c. 92.

12 & 13 Vict. c. 92, and 17 & 18 Vict. c. 60, make provision for the supply of food to impounded animals, and the recovery of the costs thereof. Previously to 12 & 13 Vict. the poor animals, while impounded, were made to suffer by want of food and water, hunger and thirst, for the culpable negligence or offence of their owners.

In 1876, an Act (39 & 40 Vict. c. 77) for the further protection of animals and prevention of cruelty to them, was passed to regulate, under strong restrictions, and to prevent experiments calculated to inflict pain on animals, under the practice known as "vivisection;" and made all exhibitions to the general public, whether admitted on payment or gratuitously, of experiments on living animals, calculated to give pain, illegal.

Attention is specially directed to the appeal clause in each of these Acts. It will be seen that they are drawn in distinct terms as to conditions and regulations for the appeal; and they are each more or less different from the conditions and regulations of the Summary Jurisdiction Act, 1879, under which, as in other cases of appeals against convictions, the

party aggrieved may make his election to appeal. See *infra*, tit. "Summary Jurisdiction Acts."

It may be noticed that it is only under the Contagious Diseases Animals Act that the complainant has the right of appeal on the dismissal of the information.

Cruelty to Animals.

12 & 13 Vict. c. 92.

The 12 & 13 Vict. c. 92 was passed "for the *more* Cruelty *effectual* prevention of cruelty to animals;" and sec. 2 under 12 & 13 Vict. c. 92, s. 2. enacts, that if any person shall "cruelly ill-treat, over-drive, abuse, or torture, or cause, or procure to be cruelly beaten, ill-treated, over-driven, abused, or tortured, any animal, each offender shall for every such offence forfeit and pay a penalty not exceeding £5. For the definition of "animal" see *post*, p. 94.

This section omits the qualifying word, "wantonly" (a) The *bare* which was in the repealed statute; and makes now the *bare* act of cruelty the offence.

Sec. 3 prohibits the keeping, using, or acting in the management of any place for the purpose of fighting or baiting any kind of animal whether of a *domestic or wild* nature, or permitting or suffering any place to be so used, under a penalty not exceeding £5 for every day such place is so kept used or managed; the person receiving the money for admission is deemed the keeper, and any person aiding, encouraging or assisting such fighting or baiting is subject to a penalty of not exceeding £5. The place must be "kept or used for the purpose of baiting:" see *Clarke v. Hague*, 2 E. & E. 281; 29 L. J. M. C. 105; *Morley v. Greenhalgh*, 32 L. J. M. C. 93; 3 B. & S. 374; *Budge v. Parsons*, *ib.* 382. Fighting or baiting animals.

By sec. 4 any person who by cruelty to any animal, causes damage to another person, will be liable to pay compensation not exceeding £10; but such payment will not affect any punishment under sec. 2 or 3. Compensation for damage done.

By sec. 5 every person who shall impound or confine, or cause to be impounded or confined, in any pound or receptacle of a like nature, any animal, and fails to provide and supply it with fit and proper food and water, will be subject to a penalty of twenty shillings. The impounder or Impounded cattle to be fed.

(a) "Wantonly" is retained &c., in a licensed house, &c.; 7 & 8 in the Act relating to cruelty by Vict. c. 87, s. 3. a licensee to slaughter horses,

distrainer is alone liable under this section, and not the pound-keeper : *Durgen v. Davies*, 2 Q. B. D. 118 ; 46 L. J. M. C. 122 ; 35 L. T. 810 ; 25 W. R. 230 (*a*).

As to a person licensed to slaughter horses not supplying the animal with proper food and water, see section 9, and tit. "Slaughter-Houses" (*post*).

Conveyance
of animals.

Any person carrying, or causing to be carried, upon any vehicle any animal in such a manner as to cause unnecessary pain or suffering, will be liable to a penalty not exceeding £3 for the first offence, and £5 for the second and every subsequent offence.

Sec. 9, having reference to cruelty to animals brought to a slaughter-house for slaughter, applies equally to a private place (as a dog-kennel) as a licensed slaughter-house : *Colam v. Hall*, L. R. 6 Q. B. 206 ; 40 L. J. M. C. 100 ; 23 L. T. 802 ; 19 W. R. 563.

The arrest.

A constable may arrest a person offending under the Act, "upon his own view ;" and on the complaint or information of any person declaring his name and address, without any warrant or other authority : sec. 13.

The com-
plaint.

The "complaint" before the justice must be made within one calendar month after the cause for it has arisen, and may be heard without information in writing : sec. 14.

Committal.

A person convicted and not paying the penalty immediately or as directed, may be committed to the House of Correction, with hard labour for two months, unless the penalty be sooner paid ; and if the conviction be before two justices, or a metropolitan police magistrate, such committal may be for three months : sec. 18.

Before a
metropoli-
tan magis-
trate.

Molesting
a constable
or keeper
of a pound.

Any person obstructing, assaulting any constable, or keeper of a pound in the exercise of his duty under the Act will be liable to a penalty not exceeding £5 : sec. 20.

Decisions
on offences.

Cases of cruelty have come before the Court of Queen's Bench on cases stated by the justices under Jervis's Act, and been held to be within the Act, 12 & 13 Vict. c. 92. A few illustrations may show the class of cases within the Acts. In *Murphy v. Manning*, 2 Ex. D. 307 ; 46 L. J. M. C. 211 ; 25 W. R. 540 ; 36 L. T. 592, it was held that unless it could be shown that the cutting off the combs of cocks (*b*)

(*a*) Should the party liable to supply the food and water fail to do so, any other person may, and recover the costs under 12 & 13 Vict. c. 92, sec. 6 ; see 17 & 18 Vict. c. 60, sec. 1.

(*b*) "Cocks" are held to be "domestic animals" : see *Budge v. Parsons*, 3 B. & S. 382 ; 32 L. J. M. C. 95 ; *Coyne v. Brady*, 12 Ir. L. R. 577 ; *Bates v. McCormack*, 9 L. J. C. P. Ir.

was done for some lawful purpose legalized by custom for the benefit of the animal itself, or for making it more serviceable for the lawful use of man, the cutting the combs off would be an offence.

In *Everitt v. Davies*, 38 L. T. 360; 26 W. R. 332, Ex. D., it was held that the owner of a horse which is incurably diseased and in pain, turning it out to graze, where by moving about to obtain its food it is inevitably put to intense pain, commits an offence under the Act; but he would not be bound to slaughter the horse under other circumstances: see also *Powell v. Knights*, 38 L. T. 607; 26 W. R. 721, Q. B. D.

Coursing rabbits within an enclosed place is not within the Act. *Pitts v. Millar*, 9 L. R. Q. B. 380; 43 L. J. M. C. 96; 30 L. T. 328.

In a case on appeal before Sir Wm. Bodkin, at the Middlesex Sessions, a cattle dealer was convicted of allowing his cow to be "over-stocked" with milk at the New Cattle Market, while the calf was standing by muzzled. Many other instances may be mentioned; as, overcrowding cattle in railway trucks and in steamers; having vessels badly appointed for the conveyance of cattle (*a*).

Plucking birds when alive; setting dogs on cats; failing to provide food for animals, &c., which are offences within the Act, and have been from time to time so treated by justices at sessions.

There is no appeal given to the complainant on the dismissal of the summons. An appeal is, however, given to the party "aggrieved" on a conviction where he is adjudged to pay a sum exceeding £2, and which must be exclusive of costs: *R. v. Warwickshire*, 25 L. J. M. C. 119; 6 E. & B. 837; *Ricardo v. The Maidenhead*, L. B. H., 27 L. J. M. C. 73. The appeal will be to the next court of general or quarter sessions holden not less than fourteen days after the day of such conviction for the county, borough, or other jurisdiction wherein the cause of appeal shall have arisen.

The section provides that the appellant shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions. And shall remain in custody until the sessions, or enter into

(*a*) See 41 & 42 Vict. c. 74, s. 32; Transit of Animals Order, sections xxiii. to xxxii.; *Johnson v. Colam*, L. R. 10 Q. B. 544; 44 L. J. M. C. 185; 32 L. T. 725; 23 W. R. 697.

a recognizance with two sufficient sureties, before a justice of the peace to appear at the sessions, and try the appeal and pay such costs as may be awarded, and upon entering into the recognizance the appellant may be discharged from custody.

The Court will hear and determine the matter of the appeal, and make such order as may seem meet, and "in case of the dismissal or non-prosecution of the appeal, or the affirmance of the conviction, *shall* order and adjudge the offender to be punished *according to the conviction*, and to pay such costs as shall be thereby awarded, and also the costs of such appeal (*a*), or incident thereto or occasioned thereby, and shall, if necessary, issue process for enforcing such judgment." Sec. 25, Act 1849.

The section gives the Court power to adjourn the appeal.

The appellant may elect to appeal under the Sum. Juris. Act, 1879, secs. 31, 32. See *infra*; this subject discussed; (*infra*) tit. "Sum. Juris. Acts."

Certiorari. Sec. 26 takes away the power of issuing a writ of certiorari, the effect of which was to prevent the stating a case to the Queen's Bench by the Quarter Sessions. *R. v. Chantrell*, L. R. 10 Q. B. 587; 44 L. J. M. C. 94; 32 L. T. 305; but see now, the Sum. Juris. Act, 1879, sec. 40; tit. "Certiorari" (*infra*), p. 180.

"Animal." The word "animal" in the Act includes any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, hog, pig, sow, dog, cat, or other domestic animal. Sec. 29, Act 1876.

Adminis- By 13 Vict. c. 13, the Drugging of Animals Act, 1876, it
tering
poisonous
drugs to
animals. is recited that it was expedient to make provision against the practice of administering poisonous drugs to horses and other animals by disqualified persons, and without the knowledge and consent of the owners.

It is enacted by sec 1, that if any person wilfully and unlawfully administers to, or causes to be administered to, or taken by any horse, cattle, or domestic animal any poisonous or injurious drug or substance, he shall (unless some reasonable cause or excuse is shown on his behalf) be liable, on summary conviction, to a penalty not exceeding £5, or, at the discretion of the Court, to imprisonment with or without hard labour, for any term not exceeding one month in the case of the first offence, or three months in the case of a second or any subsequent offence.

(*a*) It is imperative on the court under the above section to grant the costs: *R. v. Yorkshire*

W. R., 31 L. J. M. C. 271. See this case under tit. "The Highway Acts," *infra*.

Nothing in the Act will affect the owner or person acting by his authority in administering any such drug or substance to the horse, &c.: sec. 2.

And nothing in the Act will exempt a person from liability to any greater or other punishment which may be imposed under any other Act or law, so that he be not more than once punished for the same offence.

There is no appeal given by the Act; but by sec. 19, Appeal. Summary Jurisdiction Act, 1879, the party convicted will have his appeal, under the conditions and regulations of that Act, should the sentence be one of imprisonment without the option of paying a fine. See tit. "Summary Jurisdiction Acts."

Vivisection.

Under "The Cruelty to Animals Act, 1876," 39 & 40 Vict. c. 77, sec. 2, all painful experiments on living animals (known as "Vivisection") calculated to give pain are prohibited under a penalty of not exceeding £50 for the first offence, and £100 for the second offence or imprisonment for not exceeding three months, unless the object of the experiment (sec. 3) be the advancement of physiological knowledge, or which may be useful for saving or prolonging life or alleviating suffering, or may be absolutely necessary for instruction and not the attaining of manual skill. The animal must be under the influence of some anæsthetic during the operation, and killed before sensibility returns, if it be probable that pain would be felt should sensibility return. No experiment is to be performed at any lecture, except the lecturer be licensed under the conditions of the 11th sec.

Provisions against "vivisection."

By sec. 6, public exhibitions of experiments on animals calculated to give pain are prohibited as illegal; and persons performing or aiding such experiments will be guilty of any offence under the Act, and be subject to a penalty for the first offence of £50, and for a second and any subsequent offence, £100, or imprisonment not exceeding three months.

Public exhibitions.

By sec. 21, for the prosecution of a *licensed* person the assent in writing of the Secretary of State is necessary. Sec. 13 empowers a justice, on information on oath that reasonable grounds exist for believing an *unlicensed* person, in an unregistered place, is performing experiments in contravention of the Act, to issue a warrant authorising the police to enter and search such place, and to take the names

Prosecution of licensed and unlicensed persons.

and addresses of the persons found there. Any person obstructing the officer, or refusing his name on such occasion, will be subject to a penalty of £5.

Appeal.

Under the Act of 1876, sec. 16, where, in England, a party thinks himself aggrieved by any conviction made by a Court of Summary Jurisdiction on determining any information, under the Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:—

1. The appeal shall be made to the next court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than twenty-one days after the decision of the court from which the appeal is made; and

2. The appellant shall, within ten days after the cause of appeal has arisen, give notice to the other party and to the Court of Summary Jurisdiction (*a*) of his intention to appeal and of the ground thereof; and

3. The appellant shall, within three days after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, to pay the costs awarded, or give such other security by deposit of money or otherwise as the justices may allow; and

4. Where the appellant is in custody he may be released.

5. The Court of Appeal may adjourn the appeal, and upon the hearing may confirm, reverse, or modify the decision of the Court of Summary Jurisdiction, or remit the matter to that court with the opinion of the Court of Appeal thereon, or make such other order in the matter as the court thinks just; and if the matter be remitted the Court of Summary Jurisdiction shall re-hear and decide the information in accordance with the order of the said Court of Appeal. The Court of Appeal may make such order as to costs to be paid by either party as the court thinks just.

See also the Summary Jurisdiction Act, 1879, secs. 31 & 32, under which there is the option of election to appeal. As in all cases the sections require careful comparison. See remarks on those sections under tit. "Summary Jurisdiction Acts" (*infra*).

(*a*) The notice is not required under the 12 & 13 Vict. c. 92, *ante*, p. 92. What is the Court of Sum. Juris.: see *Curtis v. Buss*;

S. C. *eo nom.* *In re Curtis*, 3 Q. B. D. 13; 47 L. J. M. C. 112; and see that case, *infra*, tit. "Alehouse."

THE CONTAGIOUS DISEASES ANIMALS ACT, 1878.

Under 41 & 42 Vict. c. 74 (Contagious Diseases Animals Act, 1878), sec. 33, railway companies are bound to make provision for a supply of water and food for cattle at stations specified by the Privy Council; and such food and water must be supplied to any animals carried by the company, on the request of the consignor, or person in charge thereof; and the company may recover the cost of the consignor.

And as regards the supplying animals with *water*, if the person in charge of the animals makes no request for water, and they remain without water for twenty-four hours, the consignor and person in charge will *each* be *guilty of an offence* under the Act; and it will be for the person charged to prove such request, and the time within which the animal had a supply of water: sec. 33. By sec. 60, any person "guilty of an offence" against the Act will, for every such offence, be liable to a penalty not exceeding £20; and if committed in respect of more than four animals, to a penalty not exceeding £5 for each animal. See the several offences in secs. 61 and 62.

1. By sec. 66 it will be sufficient (sub-s. 1) to describe an offence in the words of the Act, Order in Council, or regulation of a local authority under which the offence arises, or in similar words.

2. Any exception, exemption, excuse or qualification may be proved by the defendant, but need not be specified or negatived in the information; or if specified or negatived it need not be proved.

3. The warrant of commitment will not be void for any defect therein, if there is a valid conviction to sustain it, and it allege the person accused therein has been convicted.

4. Knowledge on the part of the owner or person in charge of the animal charged with an offence against the Act relative to the disease or illness of the animal will be presumed, unless and until the defendant disprove such knowledge, and could not with reasonable diligence have obtained that knowledge (*a*).

(*a*) Under the former Act it was necessary to show that the party *knew* the animals were diseased: *Nichols v. Hall*, L.

R. 8 C. P. 322; 42 L. J. M. C. 105; *Carroll v. Livers*, 7 Ir. R. Q. B. 226.

Onus of
proof.

5. Where a person is charged with not duly cleansing or disinfecting any place, vessel, vehicle, or thing belonging to him or under his charge, and a presumption against him on the part of the prosecution is raised, the onus of the proving a due cleansing and disinfecting rests on the defendant.

6. The person charged may give evidence.

Where
offence
committed¹.

7. The offence under the Act will be deemed to have arisen either in the place where it actually was committed or arose, or in any place where the person charged, or complained of, or proceeded against, happened to be at the time of the instituting or commencing the charge, complaint, or proceeding. *Johnson v. Colam*, L. R. 10 Q. B. 544; 44 L. J. M. C. 185; 32 L. J. 725; 23 W. R. 697 (a).

By sec. 63, penalties may be recovered as under 11 & 12 Vict. c. 43.

Detention
by police.

Sec. 50 empowers a police constable to detain, without warrant, a person "found committing," or reasonably suspected of being engaged in committing an offence under the Act; and may detain and examine the animal, vehicle, boat, or thing to which the suspected offence relates, and may require and enforce that the same be taken back to the place or district from whence it was unlawfully brought.

Appeal.

Any person thinking himself aggrieved by the dismissal of a complaint by, or by any determination or adjudication of, a court of summary jurisdiction under *this* Act, he may appeal therefrom. Sec. 64 (1).

The appeal is to be made to the next practicable court of general or quarter sessions for the county or place in which the cause of appeal arises, holden not less than twenty-one days after the decision appealed from (2).

The appellant must, within ten days after the decision, give notice to the clerk of the court whose decision is appealed from of his intention to appeal, and of the grounds thereof, and to the other party (3).

The appellant is, within three days after such notice, to enter into a recognizance before a justice, with two sufficient sureties conditioned personally to try the appeal (4).

The court may adjourn the appeal and make such order thereon as the court may think fit (5).

See remarks as to the appellant's right of election to appeal under the Summary Jurisdiction Act, 1879, secs. 31 and 32, tit. "Summary Jurisdiction Acts" (*infra*).

(a) Notwithstanding any Metropolitan Police, or Municipal Act, one half of the penalty

will be paid to the person who proceeds for the same. Sec. 66 (8).

Under the Act (*sup.*) 1878, the complainant has a right of appeal on the dismissal of the information, not so under the other prior statutes ; there the appeal is only to be by party convicted.

Slaughter Houses.

The 26 Geo. 3, c. 71, sets forth that the practice of stealing horses, cows, and other cattle had then increased to an alarming degree, and had been greatly facilitated by persons of low condition who kept houses for slaughtering horses and other cattle :—for a remedy it was enacted, that no person should use any house or place for the purpose of slaughtering any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle (*a*), which is not killed for butcher's meat, without first taking out a licence for that purpose at the general quarter sessions for the county, &c., wherein the slaughtering-house is situate ; and the justices are authorised and empowered to grant such licence upon a certificate under the hands and seals of the minister and churchwardens or overseers ; or of the minister, and two or more substantial householders of the parish wherein the applicant shall dwell, that such person is fit and proper to be trusted with the management and carrying on such business. In the event of the death of the licensee the widow or personal representative is allowed to carry on the business until the ensuing quarter sessions.

Under sec. 11 of 12 & 13 Vict. c. 92, no person can hold at the same time a licence to slaughter horses, and one as horse-dealer.

Each licence under the statute is to be signed by the justices, or the major part of them, assembled at quarter sessions ; a copy of the licence is to be registered by the clerk of the peace, where search may be made for it if necessary (sec. 2, Geo. 3, c. 71) ; and such licensee is to affix over the door or gate of the house or place where the business is carried on a large legible notice, in words prescribed by the Act (sec. 2), that he is licensed for slaughtering horses : on neglect he is liable to a penalty of £5 a day. 12 & 13 Vict. c. 92, s. 7.

In towns within the provisions of "The Towns Improvement Clauses Act, 1847" (10 & 11 Vict. c. 34), slaughter-

Slaughter-houses licensed for the prevention of horse-stealing.

Provision on death of licensee.

Horse dealer not to hold licence.

Signature to licence.

Towns Clauses Act.

(*a*) In the subsequent statute (7 & 8 Vict. c. 87) "horse" is defined to include all the animals here enumerated.

Sanitary
approval.

houses and knackers' yards are brought under the further jurisdiction of the commissioners appointed under that Act, and which provision does not interfere with the original jurisdiction of the quarter sessions under the statute of Geo. 3, which was passed, and is still in full force, as a police regulation preventative against "horse" stealing. The operation of the "Towns Improvement Act" is as a sanitary regulation. In "towns," therefore, under sec. 125, of the Towns Improvement Act, no person can carry on the business of slaughtering cattle (not being used as butchers' meat) without having obtained (and this will be in addition to the licence from the quarter sessions) a licence for that purpose from the Town Commissioners; and under sec. 126, any person using any place within the town, without having first received such licence, will be liable to a penalty of not exceeding £5; with a similar penalty for every day the offence is continued after conviction (*a*).

Slaughter-
houses in
the metro-
polis.

Under the Metropolitan Management Act, 1862, 25 & 26 Vict. c. 102, s. 94, no licence, under 26 Geo. 3, c. 71, could be granted by the quarter sessions before one month's notice of the intention to apply for it had been given to the vestry or district board; but now by the further Act affecting the metropolis and the slaughter-houses therein (37 & 38 Vict. c. 67) the establishing anew of the business of a "knacker," which is defined to mean the "slaughter of any horse, ass or mule, or any cattle, sheep, goat, or swine which is not killed for butchers' meat," is absolutely prohibited; and any person carrying on such new business is liable to a penalty not exceeding £50 a day. And by the 13th sec. the business will be deemed to be established "anew," if it is removed from one set of premises to another; or if renewed on the the same premises after a discontinuance of nine months; or the premises be enlarged without the sanction of the local authority; but a change of ownership, or the reconstruction of the premises after a fire, without extending the area, will not be deemed an establishing the business "anew."

Licence for
one year.

The quarter sessions licence is limited to a period of one year, and must be annually renewed; but on renewal no further certificate is requisite. (7 & 8 Vict. c. 87, s. 1.)

(*a*) As to a consent by a corporation as commissioners where slaughter-houses were built under a "Market Act," to which the corporation was a party, see *Anthony v. The Brecon Markets*

Company, L. R. 7 Ex. 399; 41 L. J. Ex. 201; 26 L. T. 979; see also *Hughes v. Trev*, 36 L. T. 585, Q. B. D.; and "The Markets and Fairs Clauses Act, 1847" (10 & 11 Vict. c. 14, s. 19).

By sec. 4, 26 Geo. 3, c. 71, each licensed person is, however, to attend *every* quarter sessions to produce the book which he is bound to keep containing entries of all the horses and cattle slaughtered by him. And as a further surveillance over the licence, each inspector of slaughter-houses, appointed under sec. 5, is to attend every quarter sessions, and produce his book for examination (sec. 12).

Under 7 & 8 Vict. c. 87, s. 2, the justices in quarter sessions may cancel any licence granted by them upon application and complaint made to them in writing by *any* person, and upon due proof that the complainant has given fourteen days' previous notice in writing to the clerk of the peace for the county [or borough with a court of quarter sessions], and to the party complained against; and upon due proof to the satisfaction of the justices that the person so licensed had been guilty of any violation of the statutes 26 Geo. 3, c. 71 [and 5 & 6 Will. 4, c. 59, now repealed by 12 & 13 Vict. c. 92]. Although there are offences included in other statutes as regards slaughter-houses, the 7 & 8 Vict. c. 87, seems the only one operative for the cancelling of the licence. The respective obligations of the licensee and the duties of the inspector will appear from the following epitome of the sections of the 26 Geo. 3, c. 71, and subsequent statutes:—

By sec. 3, every occupier of a licensed slaughter-house or place is to give, six hours previous to the slaughtering of any horse, &c., and to the flaying of any horse, &c., brought dead to the slaughter-house or other place, notice in writing to the inspector appointed under the Act (sec. 5), that he may before the slaughtering or flaying take an exact account of the same; and no horse, &c., is to be slaughtered or flayed but between 8 A.M. and 4 P.M. during the winter months from October to March both inclusive, or between 6 A.M. and 8 P.M. during the remainder of the year. By sect. 4, every person so licensed is to keep a book, and enter in it at the time the name, place of abode and profession of the owner of any horse, &c., brought for slaughter or flaying, and of the person bringing it, and the reason why it is brought, the book to be at all times open for the perusal and examination of the inspector, and every licensed person is to attend with and produce the book before any one justice of the county, &c., where the slaughter-house is situate when required by warrant or order under the hand and seal of such justice so to do, and is to produce it at every general quarter sessions for the county [or borough].

Quarter sessions may cancel licence.

By sect. 5, the inspector (*a*), on receiving the notice above mentioned from the licensee, is to attend at the slaughter-house, and take a full description of the horse or other animal to be slaughtered; and make entry thereof in his book; and the inspector is in certain cases to advertise horses, &c., intended to be slaughtered, &c., the expense of which advertisements is to be borne by the occupiers of the slaughter-house under pain of conviction in double the charge of the advertisements.

By sec. 6, every licensed person having, keeping, or using any slaughter-house is to suffer any inspector (*b*) at all times of day or night, but if in the night then in presence of a constable, to enter and inspect such house, and also any stable, building, shed, yard or premises belonging thereto, and freely to examine for or see any horse, &c., there, and to take such account as before directed.

By sect. 9, if any person, keeping or using any such slaughter-house or place, throw into any lime-pit, or rub with any corrosive matter, or bury or destroy the hide of any horse, &c., slaughtered or flayed by him, he is guilty of a misdemeanor, punishable by fine, imprisonment and whipping. By sec. 10, licensed persons making or causing to be made any false entry in the book so to be kept by them as aforesaid may be convicted and forfeit not more than £20 nor less than £10.

Under the 13th sec. of the Act of Geo. 3, any person who may occasionally lend a house, barn, stable or other place for the purpose of slaughtering or killing any horse, &c., or other cattle (not killed for butchers' meat) without a licence for such place, and shall be convicted thereof before one justice on the evidence of two witnesses, the offender will be subject to a penalty not exceeding £20, nor less than £10; and in case the same be not forthwith paid, imprisonment in the House of Correction for any time not exceeding three months, nor less than one month. See scale of imprisonment under the Summary Jurisdiction Act, 1879.

The Act of Geo. 3 does not affect curriers, &c., *bonâ fide* killing an aged or distempered horse, &c., or purchasing any dead horse, &c., for the purpose of using in their trade, or a farrier employed to kill aged or distempered cattle,

(*a*) An inspector neglecting to perform his duty is subject to a penalty of £10 (7 & 8 Vict. c. 87, s. 6).

(*b*) A constable may also enter

the licensed premises for inspection; and any person obstructing an inspector in the execution of his duty may be fined £10: 7 & 8 Vict. c. 87, s. 5.

nor any person killing any horse, &c., of their own, or purchasing any dead horse or other cattle to feed their own hounds or dogs, or giving the flesh for a like purpose. (Sec. 14.)

But if any collar-maker, currier, felt-maker, tanner, or dealer in hides, or farrier, or other person, *under colour* of their respective trades or occupations, knowingly and willingly kill any sound or useful horse, &c., or boil or otherwise cure the flesh thereof, for the purpose of selling the same, such person will be an offender within the Act, and forfeit a sum not exceeding £20, nor less than £10 (Sec. 15.)

Under sec. 3 of 7 & 8 Viet. c. 87, if any licensed person *wantonly* (a) and cruelly beat, ill-treat, abuse, wound, or torture any horse, or other cattle, in any house, pound, stable, or other place in his occupation, he will on conviction forfeit a sum not exceeding £5. Cruelty by licensee to the animal.

Under the Towns Improvement Clause Act, 1847, 10 & 11 Viet. c. 34, s. 129, where a person is convicted of killing or dressing any cattle contrary to that Act, or the "Special Act" (b), or of the non-observance of the bye-laws or regulations made thereunder, in addition to any penalty, the justices may suspend the licence for not exceeding two months; and in case the offender be the owner or proprietor of any registered slaughter-house or knackers'-yard, the justices may forbid the slaughtering of cattle therein; and on a second conviction, may declare the licence revoked, and absolutely forbid the slaughtering of cattle on the premises; and in such court the commissioners *may* refuse to grant any licence to the person whose licence had been so revoked, or on account of whose default the slaughtering of cattle had been forbidden in the registered house, &c. Licence may be suspended in addition to penalty imposed. And by the 130th sec. should such person slaughter cattle on such premises during the suspension of the licence, he will be liable to a penalty not exceeding £5; and for a repetition of such offence after the first conviction, a further penalty of £5 for every day the offence may be committed.

The Act for "the more effectual prevention of cruelty to animals" (1849), 12 & 13 Viet. c. 92, s. 8, provides for the supplying of proper food and water for horses, &c., sent for slaughter, and requires that the hair be cut off the neck of Provision for supply of food to animals sent for slaughter.

(a) "Wantonly" is here retained as applying to licensed slaughterers; it is omitted in the principal Act, 12 & 13 Viet. c. 92,

s. 2.

(b) "Special Act" means an Act to be passed after 1847.

the horse sent for slaughter within three days; the non-compliance with these regulations subjects the offender to a penalty of not exceeding £5. Sec. 9 provides that no such horse, &c., shall be employed in any manner of work under a penalty of not exceeding 40s. for each day the horse may be so employed. And by sec. 10, a full description of each horse is to be kept by the licensee in a book, which is to be open to inspection; and upon a neglect to make such entry, or to allow any inspection of, or to produce such book when required by a justice, or to a person authorised by him, such licensee will be liable to a penalty of not less than 40s.

Working a
horse sent
for kennel
use.

A huntsman of a pack of hounds had the charge of the kennels and of the slaughter-house where horses were slaughtered for feeding the dogs. Instead of slaughtering a horse sent to him to be killed, he lent it to a person for the purpose of being worked, and it was worked. It was held that he was properly convicted under the above 9th section; and that such penalty was not confined to licensed persons, under 26 Geo. 3, c. 71. *Colum v. Hall*, L. R. 6 Q. B. 206; 40 L. J. M. C. 100; 23 L. T. 802.

Where
appeal.

No appeal is given under 36 Geo. 3, c. 71. But should the defendant be imprisoned without the option of a fine, the case would come within the provisions of the Summary Jurisdiction Act, 1879, and an appeal be had under it: see secs. 19, 31.

Appeal
under 7 & 8
Vict. c. 87.

The 7 & 8 Vict. c. 87, s. 9, provides for an appeal to the party "aggrieved" by any order or conviction under that Act to the next (a) quarter session for the county wherein the cause of complaint arose, provided the party at the time of the order or conviction, or within forty-eight hours thereafter, enter into a recognizance with two sureties to appear and try the appeal, and abide the judgment, and for payment of costs. The witnesses may also be bound over, and may be paid their expenses, as in an ordinary misdemeanour; and should the appeal be dismissed, the county treasurer will be repaid such expenses by the appellant.

Appeal
under 12
& 13 Vict.
c. 92.
Sum. Juris.
Act, 1879.

Where the conviction on which the appeal to be made is made under the provisions of the 12 & 13 Vict. c. 92, see the Appeal Clause, *ante*, p. 93.

The appellant will have his election to appeal under the

(a) "The next practicable sessions:" sec. 32, Sum. Juris. Act, 1879.

Summary Jurisdiction Act, 1879. See secs. 31, 32; and *infra*, tit. Summary Jurisdiction Act."

As regards the Metropolitan Acts, sec. 6 of the Slaughter-Houses Metropolis Act gives to the party aggrieved by any order or conviction under that Act an appeal to the quarter sessions held not less than fifteen days, nor more than four months after the decision of the court appealed from. The appellant must give, within seven days after the cause of appeal has arisen, notice to the other party, and to the Court of Summary Jurisdiction (see *Ex parte Curtis*, S. C. *eo nom.* *Buss v. Curtis*, 3 Q. B. D. 13; 47 L. J. M. C. 112), of his intention to appeal, and the ground thereof; and immediately after such notice enter into his recognizance to try the appeal, abide the judgment, and pay costs. See also secs. 31 and 32, Summary Jurisdiction Act, 1879, *infra*, under which the appeal *may* be made.

Slaughter-houses in the metropolis.
Appeal.

APPEAL.

An appeal is a complaint made to a superior tribunal against an alleged erroneous judgment of an inferior jurisdiction, and brought in order to avoid or quash it; it is in its nature a writ of error: *Prosser v. Hyde*, 1 T. R. 414. Definition.

It lies on a question of law or fact. Where a question of law is alone involved, the question raised may be referred by special case to the High Court; but if the dispute at issue is on facts, then the appeal is to the sessions (*a*): *Steel v. Brennan*, 41 L. J. M. C. 85. On what it lies.

The power of appeal to the quarter sessions is a special right, and not a general one: it is not to be implied in any case where not expressly given, and annexed to the authority: *R. v. Oxfordshire*, 1 M. & S. 448; *R. v. Worcestershire*, 3 E. & B. 487. In this lies the distinction with a writ of *certiorari*, which is of common law right, and cannot be taken away except by express enactment: *R. v. Hanson*, 4 B. & A. 521; *R. v. Liverpool (Mayor)*, 3 D. & R. 275. When once given, the appeal cannot be taken away by either implication or deduction from other clauses. Right of appeal only where expressly given.

(*a*) When the appeal is given to the general or quarter sessions, the *general* sessions may be passed over and the appeal be made to the sessions held in the statutable

sessions week: see *R. v. Middlesex*, 4 Q. B. 807; 5 D. & E. 580; 17 L. J. M. C. 111; *R. v. London*, 15 East, 632.

R. v. Hants, 1 B. & A. 654; *R. v. Salop*, 2 *ib.* 145; *R. v. Cumberland JJ.*, 1 B. & C. 64; *R. v. Stock*, 8 Ad. & Ell. 405. Nor can the right be extended by inference, or equitable construction: see *Skone's case*, 6 East, 514; *R. v. Staffordshire*, 12 East, 572.

Provision
for appeal
incorporated
with
other
statutes.

A borough rate, for instance, may be *made, levied, and recovered* by the town council, under 7 Will. 4, and 1 Vict. c. 81, s. 2, for defraying certain expenses "in the manner provided by the Municipal Corporations Act." There is an appeal against a borough rate, under sec. 92 of the Municipal Corporations Act; but as no appeal is mentioned in 7 Will. 4, and 1 Vict. c. 81, it was held that there was no appeal against a rate made under that statute: *R. v. Ipswich (Recorder)*, 8 Dowl. P. C. 103. As to the limitation of the appeal under sec. 92 of the Municipal Corporations Act, see *R. v. The Recorder of Bath*, 9 A. & E. 871; Rawlinson's Municipal Corporation Acts, by Geary, 7th ed. p. 135.

So also this point is illustrated under the repealed Acts affecting bastardy: see *R. v. Yorkshire W. R.*, 1 Q. B. 325; see also *R. v. Liverpool (Mayor)*, 3 D. & R. 275, where a statute, after referring to a former Act, expressly declared "that all the powers and provisions therein contained shall be incorporated in the present Act." In one of the sections the *certiorari* was taken away, and an appeal was given: under this declaration the *certiorari* was held to have been taken away generally, and the appeal applied to each statute. See *R. v. Skone*, 6 East, 514; *R. v. Staffordshire*, 12 *id.* 572; *R. v. Surrey*, 2 T. R. 504.

Statutes
in pari
materia.

Where the statute gave the justices power to make an order on which an appeal was given, and a subsequent statute, *in pari materia*, incorporated therewith, varied the terms in which such order might be made, and enacted that such order should be final and conclusive, it was held, the appeal was taken away. *R. v. Bedwell*, 4 E. & B. 213; 24 L. J. M. C. 17; *R. v. Hanson*, 4 B. & Ald. 519.

On the other hand, where an Act is incorporated with several others, *in pari materia*, to be construed as one Act, and contains a general appeal clause; and in one of the subsequent Acts there is a provision that, on any fresh proceedings under such Act, "the like proceedings" should be had as under the former Act, a right of appeal is given. So under the Highway Act, 27 & 28 Vict. c. 101, s. 21(a), providing for the discontinuance of the maintenance of a

highway, and on which, upon the surveyors applying to two justices to view the same, "the like proceedings shall be had as where application is made under the Highway Act, 1835," a right of appeal is conferred to the quarter sessions in like manner as by sec. 88 of 5 & 6 Will. 4, c. 50; *R. v. Surrey JJ.*, L. R. 5 Q. B. 87, 466; 39 L. J. M. C. 49, 145. For other instances of appeals, under statutes *in pari materia*, and consolidated by a subsequent Act, see *R. v. Liverpool (Mayor)*, 3 D. & R. 275; *R. v. Nuisances Removal Commissioners of Middleton*, 1 E. & E. 98; 28 L. J. M. C. 40.

In some instances the appeal is to be made "in like manner," or "as near thereto as the nature of the case will admit," as provided for in some other Act; in such case the provisions come into operation as soon as the appeal *begins*, and no sooner; and the proceedings must then approximate as nearly as they can under each particular circumstance. See *R. v. Carmarthen (Recorder)*, 7 A. & E. 756; *R. v. Glamorganshire*, 13 Q. B. 561; 18 L. J. M. C. 118; *R. v. Yorkshire, W. R., JJ.*, 20 L. J. M. C. 23; *R. v. Lancashire JJ.*, 18 Q. B. 361; 21 L. J. M. C. 164; *R. v. St. Peter, Barton-upon-Humber*, 17 Q. B. 630; 21 L. J. M. C. 23.

In the case of *R. v. Carmarthen (Recorder)* (*sup.*), the council of the Borough under 5 & 6 Will. 4, c. 76, s. 92, made a borough rate. The section gives *them* all the powers of county justices in quarter sessions under 55 Geo. 3, c. 51, "or as near thereto as the nature of the case will admit;" but the council are not to hear any appeal against such rate, and a person aggrieved is to appeal to the recorder of the borough, who is to hear and determine the appeal "as in the case of an appeal against any county rate." The 55 Geo. 3, c. 51, provides that (*inter alia*) notice of appeal should be given to the clerk of the peace of the county, and the hundred constable. In the case notice of appeal was given to *the town clerk*, and not to the clerk of the peace of the borough, and that was held sufficient. Williams, J., said: "We are to follow the analogy of a county rate as nearly as possible. Some of the provisions respecting county rates cannot be followed literally; as the provision respecting the constable of the hundred, there being no such officer in a borough. We must then approximate; and here notice has been served on the party whose office *most resembles* that of the clerk of the peace of a county." Per Coleridge, J. "The council make the rate; their officer should receive the notice."

Appeal
"in like
manner"
or "as near
thereto as
the case
will
admit."

Analogous
proceed-
ings.

Conditions precedent to right to appeal must be exhausted.

All conditions precedent must have been exhausted by which the appellant party could have obtained other relief before his right of appeal attaches. Thus where under a local Act an appeal was given to the quarter sessions on anything to be done by virtue of the Act, if the party aggrieved was dissatisfied with the determination of certain officers to whom an appeal was given in the first instance, upon appealing to those officers, they resolved, without coming to a determination on the merits, to take no further notice of the appeal. The Queen's Bench held that there was no appeal against such resolution, as the officers had not heard and determined the appeal, so that there was nothing done on which to appeal (*a*). *R. v. Kent JJ.*, 9 B. & C. 283; see *R. v. Tucker*, 3 B. & C. 544, where the petty sessions heard evidence and determined they had no jurisdiction; it was held, that there had been a hearing and determination, which was "a thing done:" see also, *R. v. St. Albans JJ.*, 3 B. & C. 698; *Blackmore v. The Glamorgan Canal Co.*, 3 Y. & J. 60.

Failing to obtain relief before the assessment committee.

A ratepayer has an appeal against a rate when he has "failed to obtain relief" on an appeal to the assessment committee under the Union Assessment Act, 1864 (27 & 28 Vict. c. 39), s. 1. On an appeal to the committee, the committee adjourned their decision pending the hearing of a special case then for consideration of the superior court, whose judgment would govern their own decision. The ratepayer having appealed to the quarter sessions, it was held he had *not* "failed to obtain relief," and that the quarter sessions had no jurisdiction to hear his appeal. *R. (or Williams) v. Bedminster Union*, 1 Q. B. D. 503; 45 L. J. M. C. 117; 34 L. T. 795. See also *Lawes v. Arlsey*, 18 W. R. 293, C. P.; also *R. v. Lancashire JJ.*, 43 L. J. M. C. 116; 22 W. R. 647, in which the respondents did not appear at the sessions, and the rate was quashed; but on the rule for a *certiorari*, Blackburn, J., said: "the failing to obtain the relief from the assessment committee was a condition precedent, and must be proved, to give the sessions jurisdiction." See also *R. v. G. W. R. Co.*, 38 L. J. M. C. 89; L. R. 4 Q. B. 323; *R. v. Wiltshire*, 48 L. J. M. C. 142; 4 Q. B. D. 326.

Party must be in fact aggrieved.

A further condition precedent to an appeal is that the party appealing should be "aggrieved" by the act of which he complains.

(*a*) The remedy would be by mandamus to compel the officers "to hear and determine;" and

upon their decision there would be an appeal.

In this, various expressions are used in the Acts,—such as, “thinks or finds himself aggrieved;” “grieved;” “injured or aggrieved;” or “affected by some act done,” &c. Various expressions of the being aggrieved used.

The appellant must be a person *immediately* and not consequentially aggrieved; and the grievance should be one existing in law: *Harrop v. Bayley*, 6 E. & B. 218; 25 L. J. M. C. 107; *R. v. Bishop Wearmouth*, 5 B. & Ad. 942; *R. v. Edwards*, 5 B. & Ad. 407. The two following cases will illustrate this proposition:—Under the Licensing Act, 1828, s. 27, an appeal is given to “the person who shall think himself aggrieved to appeal against any such Act,” that is, the refusal to renew or transfer a licence or the infliction of a fine; it was held in *R. v. Middlesex*, 3 B. & Ad. 938; *R. v. Colbeck*, 12 A. & E. 161, that the person here “immediately aggrieved” by the act done, as by the decision of the justices on an application for a licence, was the person whose licence was dealt with, and not the owner of some public-house in the neighbourhood, although of long standing, and whose business might be seriously affected by a newly licensed house being established near to it; such a person’s interest was considered as being a mere licence for a year, and that he had no vested right (*a*) beyond that period, and was only consequentially damaged: In *R. v. Colbeck*, 12 A. & E. 161, under the old Highway Act, 12 & 13 Geo. 3, c. 78, every inhabitant was deemed to be aggrieved by a bad appointment of a surveyor.

Under 4 & 5 Will. 4, c. 76, s. 79, and 11 & 12 Vict. c. 31, s. 9, it is requisite that a notice of chargeability with a copy of the order of removal should be served on the officers of the parish or union to which a pauper is ordered to be removed twenty-one days before the removal of the pauper. Grievance must be existing.

(*a*) It is to be observed, however (*R. v. Middlesex, supra*), that the suggestion that there is no vested interest beyond a year in a licensed house, rests on a fallacy. Every licence of a well-conducted house always was and still is of value and saleable in the market as a vested interest; and since the Licensing Act, 1872, sec. 42, that interest is fully confirmed. Although *R. v. Middlesex* may illustrate the proposition, it is in fact the custom to allow neighbouring publicans, and other persons who

are able to make out a case that no new licensed house should be established in the particular neighbourhood, to appear and oppose a new licence: see *R. v. Deane*, 1 G. & D. 292, 299; see also *R. v. anton (St. Mary)*, 3 M. & S. 465; *R. v. Incedon*, 1 M. & S. 268; *R. v. Dersnap*, 16 East, 194; *R. v. Williams*, 6 Q. B. 273, as to an immediate grievance from a local nuisance.

(*b*) See Lord Mansfield’s remarks in *R. v. Denbighshire*, 1 B. & Ad. 616; 4 Burns’s Justice of the Peace, 815.

Until such service of the order there is no power to remove the pauper, and therefore, until such notice and copy order are duly served, there is no "existing" grievance on which an appeal can be made: *R. v. Shrewsbury (Recorder) (b)*, 1 E. & B. 711; 22 L. J. M. C. 98, overruling *R. v. Brixham*, 8 A. & E. 375; see *ante*, *R. (or Williams) v. Bedminster Union*, 1 Q. B. D. 503; 45 L. J. M. C. 117; 34 L. T. 795; *R. v. Wiltshire*, 48 L. J. M. C. 142. So a rate may be disregarded which has not been published: *Milward v. Caffin*, 2 Wm. Black. 1336; *R. v. Newcombe*, 4 T. R. 368; *Lord Amherst v. Lord Somers*, 2 T. R. 372; see also *R. v. Margam*, 1 T. R. 775; *R. v. Westbury*, 5 Q. B. 500.

As regards the case *R. v. Shrewsbury Recorder*, where the notice of the order of removal was not directed to the clerk of the guardians at his office (see 30 & 31 Vict. c. 106, s. 24), and the appeal was made on this informal notice, objection being taken to the service; it was held there was no grievance on which to appeal. This case may be likened to the non-publication of a rate, in which the rate may be treated as a nullity (*Millward v. Caffin*, 2 Wm. Black. 1330), and the notice as informal and a nullity. There being no grievance on such informal notice or information, the only course left would be to await the actual removal of the pauper, on which, as of old, the grievance would commence; or the reception of the pauper might be refused, leaving the removing guardians to enforce their order; should the pauper be received, then a right of appeal would arise.

The objection would be merely technical, and would not be received with favour; and, inasmuch as the order might be abandoned, and another order obtained, no real advantage could be obtained by not admitting the service of the notice. Upon such an objection being taken, the notice being, in fact, informal, the removing parish should at once serve a proper notice in lieu of the first (a).

There must be a good cause for the grievance pertinent to the appellant.

There must also be "good cause" for the party saying he is aggrieved. He must be able to show that he has a real special grievance pertinent to himself. See Erle's, J., remarks in *R. v. Harrop*, 6 E. & B. 218; 25 L. J. M. C. 107; see also *R. v. Essex*, 5 B. & C. 431; *R. v. Bishop Wearmouth*, 5

(a) Under the Lands Clauses Act, 8 & 9 Vict. c. 18, s. 68, a notice was served on the secretary of the B. Railway (which ran from B. to C.), at their offices, and addressed to "the B. and C. Rail-

way"—held, there was evidence from which the jury might infer that the notice had come to the knowledge of the directors: *Eastman v. The Blackburn Railway*, 9 Exch. 758.

id. 942, in which case Lord Denman remarked that the appellate clause ought not to be so construed as to let in any one who, taking a capricious view, might think himself aggrieved; the appeal must be confined to those who may have *reasonable ground* for thinking themselves aggrieved.

The decisions in *R. v. Shrewsbury (Recorder)*, *R. (or Williams) v. Bedminster Union, &c.*, *supra*, clearly shows that until the *actual cause* of complaint arises to create the grievance no right of appeal can have accrued. So under the General Inclosure Act, 41 Geo. 3, c. 109, s. 8, the mapping out of an allotment and notice thereof was not the time of the grievance; but the *act done* of setting out the roads commenced the cause of complaint from which the time for appealing would run. *R. v. Middlesex JJ.*, 1 Chitty, R. 366; *R. v. Gloucestershire JJ.*, 3 M. & S. 127. The execution, and not the date of the warrant for distress, for a highway rate, is the time from which the right of appeal would run under the old Highway Act, 13 Geo. 3, c. 78; "for," as the court said, "*non-liquet* that it would be proceeded upon:" *R. v. Devon JJ.*, 1 M. & S. 411. See also, where the appeal would be "after the cause of complaint," "or when the cause of complaint shall have arisen," "or next after the cause of complaint should arise." *R. v. Lancashire JJ.*, 8 B. & C. 593; *R. v. Nickolls*, 1 A. & E. 245; *R. v. Salop JJ.*, 2 B. & Ad. 145; *R. v. Pocock* 8 Q. B. 729.

But where the Act fixes the time to run *from the making* of the order, &c., the time for appealing must date from the time of the order being actually made, although the party appealing had no knowledge of such order until too late for his appealing against it.

"The period fixed by the statute is the making the order, &c., which is too distinct and express to admit of being varied by any gloss or construction," said Lord Denman, in *R. v. Derbyshire JJ.*, 7 Q. B. 193; "notice of such order made" cannot be substituted for the precise words of the statute; per Lord Ellenborough, C.J., in *R. v. Staffordshire JJ.*, 3 East, 151.

So on an appeal on an affiliation order the appeal is to be made within twenty-four hours after the adjudication and making of the order; this means after the verbal judgment of the court, and not the making up of the formal order. *Ex parte Johnson*, 3 B. & S. 947; 32 L. J. M. C. 193, overruling *R. v. Flintshire*, 3 D. & L. 537; 2 N. S. C. 236. See also *ante*, p. 107, 27 & 28 Vict. c. 39, s. 1; *R. v. Wilt-*

When
cause of
complaint
accrues.
The act
done.

Grievance
on the
making the
order.

Grievance
on adjudication.

Grievance

on failing to obtain relief. *shire*, 48 L. J. M. C. 142; 4 Q. B. D. 326; *R. v. The Great Western Ry. Co.*, 38 L. J. M. C. 89; L. R. 4 Q. B. 323, and other authorities on "failure to obtain relief" from the Assessment Committee.

Grievance on service of notice of assessment. Under the Nuisances Removal Act, 1855 (repealed), there was the same right of appeal as under the Highway Act, 5 & 6 Will. 4, c. 50, s. 105; the person aggrieved had his appeal fourteen days after service on him of the notice of assessment on the premises assessed, and not from the time when the amount of the rate was fixed. Bayley, J., observed that parties may be present in Court when rules are pronounced, but are not bound to take notice of them until they are served. The party may or may not be present when this order was made; and it is desirable that the practice should be uniform whether he does or does not attend: see *R. v. Lancashire JJ.*, 8 B. & C. 595; 2 M. & R. 519; see also *R. v. Nuisances Removal Committee of Middleton*, 28 L. J. M. C. 41; 1 E. & E. 98.

Grievance on penalty will not include costs. A grievance may exist on the infliction of a penalty as under the Prevention of Cruelty to Animals Act (12 & 13 Vict. c. 92, s. 25), giving a right of appeal when the penalty adjudged on a conviction exceeds 40s., but this must be the full penalty independent of costs: *R. v. Warwickshire JJ.*, 6 E. & B. 837; see *Ricardo v. The Maidenhead Local Board*, 27 L. J. M. C. 73.

Question, is the grievance within the statute? Where there is the express provision in a statute giving an appeal, the only question is,—does the particular grievance, of which the appellant complains, come within the meaning and words of the appeal clause? See *R. v. Tucker*, 3 B. & C. 544; *R. v. St. Albans*, *ib.* 698; *R. v. Kent*, 9 *id.* 283; *R. v. Devon*, 4 M. & S. 421 (a).

Volenti non fit injuria. But the maxim *volenti non fit injuria* applies where the party appealing has himself in any way consented to the doing of the act of which he complains. Erle, J., likened his case to that of a relator in a *quo warranto* information, who could not be heard to say that an election in which he had concurred was void: see *Harrop v. Bayley*, 6 E. & B. 218; 25 L. J. M. C. 107; but it would seem that had the appellant withdrawn his assent before the act appealed against was done, he might appeal as though his concurrence had

(a) On a prosecution under 5 & 6 Will. & Mary c. 11, charging a defendant with *attempting* to set fire to a house, the defendant was convicted and paid the

fine; but the prosecutor went without his costs, as he was not a person injured, for there was no damage done: *R. v. Ingledon*, 1 Wilson, 139.

never been given: see *S. C.* 25 *L. J. M. C.* 107; see also *Graves v. Janssens*, 9 *Ex.* 481; *Trafford v. Bachm*, 3 *Atk.* 440.

A corporation may be "a party aggrieved:" *Cortis v. The Kent Waterworks Co.*, 7 *B. & C.* 314; so turnpike trustees, who might appeal by one of their body (acting on their behalf), though he be not personally aggrieved; *R. v. Surrey, JJ.*, 5 *A. & E.* 701, n. A corporation may be aggrieved.

Nominal parties may be "aggrieved," as commissioners in the name of a watchman: *R. v. Edwards*, 5 *B. & Ad.* 407, n.; a select vestry in the name of the master of the work-house: *R. v. Dewhurst, ib.* 405; *R. v. Williams*, 6 *Q. B.* 273; and see *R. v. Dobson*, 9 *Q. B.* 302; *R. v. Harrop*, 25 *L. J. M. C.* 107; 6 *E. & B.* 218; *R. v. Chatham*, 12 *Q. B.* 300; 17 *L. J. M. C.* 161. Nominal parties aggrieved.

A pauper may himself be aggrieved by an order for his removal, and may appeal against it: *R. v. Hartfield, Carth.* 222; *Comb.* 478. This was the law prior to 11 & 12 *Vict. c. 31*; see 13 & 14 *Car. 2, c. 12, s. 2.* A pauper may be aggrieved by order of removal.

By 28 & 29 *Vict. c. 79* (The Union Chargeability Act), sec. 3, guardians of unions may both defend and appeal against orders of removal: *R. v. Colbeck*, 11 *Ad. & Ell.* 161; 9 *L. J. M. C.* 61. And they will act with the like incidents and consequences as in the cases proceeded with by and against the overseers. *R. v. Westmorland*, 12 *L. J. M. C.* 113; 1 *D. & L.* 178; *R. v. Denbighshire*, 1 *B. & Ad.* 616. The guardians may prosecute and defend appeal.

Where public officers are entitled to appeal collectively, as overseers of a parish on the part of the parish, the appeal cannot be instituted by a less number than a majority of them; one overseer alone could not appeal. *R. v. Lancashire JJ.*, 5 *B. & Ald.* 755. Public officers' right to appeal by a majority.

Several ratepayers may join in one appeal against the same rate, and the court will consider their individual cases separately: *R. v. White*, 4 *T. R.* 771. So several persons may join in an appeal against a rate alleging as their ground that several others are rated in a less proportion than themselves: *R. v. Sussex*, 15 *East*, 206 (a); see also *R. v. Oxfordshire*, 4 *Q. B.* 177. Where the appeal on the rating has been commenced against the rating of more than one person, the appellant may abandon an appeal as against one or more, and proceed as respects the remainder. *R. v. Kent JJ.*, *L. R.* 6 *Q. B.* 122; 40 *L. J. M. C.* 76, questioning *R. v. Cambridge-shire*, 19 *L. J. M. C.* 130; 1 *L. M. & P.* 47. Appeal by several persons in one appeal.

In the notice of appeal the appellant must state that he is Notice

(a) See *R. v. Eyre*, 26 *L. J. M. C.* 125, as to form of appeal.

must state
party is
aggrieved,
or show by
facts a
grievance.

in fact aggrieved: per Abbott, C. J., in *R. v. Essex JJ.*, 5 B. & C. 431, in which case there was no statement of facts from which it could be inferred that the party had good cause for any special grievance, beyond any other rateable inhabitants: see remarks in *R. v. Yorkshire*, 7 B. & C. 678. The result is that the party appealing must either state he is in fact aggrieved, or set out facts showing good cause that he is aggrieved. *R. v. Bond*, 6 A. & E. 905; *R. v. Blackawton*, 10 B. & C. 792; *R. v. Yorkshire, re Bower*, 4 B. & Ad. 685; *R. v. Poole (Recorder)*, 1 Nev. J. P. 756; *R. v. Somersetshire JJ.*, 7 B. & C. 681.

The Respondent.

Party at
whose
instance
complaint
made—
nominal or
real re-
spondent.

In most cases the statute directs against whom the appeal is to be made; should the statute not so direct, then the party at whose instance the proceedings have been prosecuted would be the proper respondent. Thus the party at whose instance a complaint has been made under the Vagrant Act may be treated as the real respondent (although the justices are the respondents under the Act), and may be ordered to pay the costs. *R. v. William Smith*, 29 L. J. M. C. 217. See also *R. v. Purdey*, 5 B. & S. 909; 34 L. J. M. C. 4; *R. v. Hants JJ.*, 1 B. & Ad. 654; *R. v. Goodall*, L. R. 9 Q. B. 557.

Parties
compelling
litigation.

"Parties who compel litigation must put themselves in the right," said Mellor, J., "and ought to pay the costs incurred by improperly setting the law in motion." *The Great Northern Ry. and London & North Western Ry. Joint Committee v. Inett*, 46 L. J. M. C. 238.

Instances
who are re-
spondents.

The following case will further illustrate who may be considered as the respondent:

An order was made adjudging the settlement of a lunatic pauper to be in parish S. D., and S. D. was ordered to pay to the treasurer of the guardians of M. union, in which the removing parish C. was situate, the expenses incurred by C. about the conveyance, &c., of the pauper lunatic; the sessions quashed this order, and ordered the overseers of C. to pay the costs of the appeal to the overseers of S. D. It did not appear who resisted the appeal, the parish of C. or the union, or both. At all events, if the treasurer of the union was in form respondent, he was so as agent of C., and the resistance was substantially on behalf of C., and the order of sessions was confirmed: see 8 & 9 Vict. c. 126, ss. 58, 62; *R. v. Chatham*, 12 Q. B. 300; 17 L. J. M. C. 161.

Justices re-

In some instances the justices who adjudicate on the case

are to be made respondents; and in some of the later statutes the term "Court of Summary Jurisdiction" is used as including the respondent justices. In any appeal where the justices or "Court of Summary Jurisdiction" are parties, it will be important to watch the course to be adopted in making the justices or "the court" respondents. For instance (*a*), in appeals under the Highway and other Acts under which the justices may be respondents (but not as under the term "Court of Summary Jurisdiction" when the notice is to be delivered, specially under the statute, to their clerk), all the justices who took part in the proceedings, or those who have signed the order appealed on, must not only be made respondents, but *each* justice must be *personally* served with the notice of appeal, or such notice be left at their residences: *R. v. Bedfordshire*, 11 A. & E. 134; that case was under the Highway Act, 5 & 6 Will. 4, c. 50; but the same point was decided under the Licensing Act, 1828, in *R. v. Cheshire JJ.*, *id.* 139; and both cases overruled the prior cases, *R. v. Staffordshire JJ.*, 4 A. & E. 844; *R. v. Sullivant*, *id.* 354. And where under the more recent Licensing Act, 1872, sec. 12, "the Court of Summary Jurisdiction" is to be made respondent on an appeal against a conviction under that Act, the same rule was held to apply as that applicable to a personal notice to justices, being members of the court, as decided in *R. v. Bedfordshire* and *R. v. Cheshire*; and where the appellant served his notices on the clerk to the court, such service was held to be bad. *Curtis v. Buss*, 3 Q. B. D. 13; 47 L. J. M. C. 35; 37 L. T. 533; *sub nom.*, 26 W. R. 210, *Ex parte Curtis*.

But with regard to the more recent Weights and Measures Act, 1878, the Summary Jurisdiction Act, 1879, and other statutes under which a Court of Summary Jurisdiction is made respondent in matters of appeal, the service of the notice of appeal is there specially enacted shall be upon *the clerk* to the court, on behalf of the justices. (See tit. "Summary Jurisdiction Acts," *infra*.)

Where the justices are to be made respondents, whether individually, or as a Court of Summary Jurisdiction, there is a great want of uniformity of procedure under the different statutes; it is therefore essential that in each case the appellant should carefully consider the appeal clause of the particular Act under which he is appealing, and strictly follow the prescribed rules and regulations.

(*a*) See also *ante*, p. 72.

Party concerned.

Some Acts require notice of appeal to be given to "the party or parties concerned" in the matter of the appeal:— for instance, under the Inclosure Acts, where the appeal was against an order defining the boundary between two townships, the notice of appeal should not only be given to the commissioners, but also to the lord of the manor (or his agent) as interested in the soil. The interest of the commoners would be too remote. *R. v. Lancashire JJ.*, 1 B. & A. 630.

Party in whose favour order made.

The appeal may be against "the party or parties in whose favour the order hath been made;" as under the Truck Act, 29 Geo. 2, c. 33. Under that Act one half of the penalty would go to the informer, and one half to the poor of the parish; it was considered that the parish officers need not be made respondents, their interest being too remote, as they would not be interested in the penalty until after the money had been levied. *Anonymous*, 2 Smith, 240.

Parties interested.

In an appeal against a poor rate under 17 Geo. 2, c. 38, sec. 4, and 41 Geo. 3, c. 23, sec. 6, which statutes are to be read together, the overseers and churchwardens, and all parties interested in the event of the appeal, are to be made respondents. So that all those whose rating is objected to or questioned on the appeal must be made respondents, and all have notice of appeal. *R. v. Brooke*, 9 B. & C. 915; *R. v. Cambridgeshire*, 1 L. M. & P. 47; 19 L. J. M. C. 130; *R. v. Eyre*, 26 L. J. M. C. 121; 6 E. & B. 992; this latter case holding that the two statutes are to be read as one.

Appeal may be virtually against the whole rate.

But if the ground of complaint is that the appellant is overrated in respect of *all* the other parties rated, *no* notice to them is necessary, as the alteration sought is a diminution of the assessment, and the remainder remain entire. *R. v. Suffolk*, 1 B. & A. 644.

Abandon as to part where more than one respondent.

In *R. v. Cambridgeshire (sup.)* all the parties interested had not been served with notice of appeal; the sessions refused to allow the appellant to abandon the appeal as against those not served, and proceed against those respondents who had been served. The Court of Queen's Bench held the sessions were right in so refusing. But in *R. v. Eyre (sup.)*, it was held that under 17 Geo. 2, c. 380, the sessions would be bound to adjourn the appeal on request that the proper notices might be given; and in *R. v. Kent*, L. R. 6 Q. B. 132; 40 L. J. M. C. 76; 19 W. R. 205, decided under 25 & 26 Vict. c. 103, s. 18, where the appellant had appealed to the assessment committee as being overrated, and that A. and B. were underrated, a small alteration was

made in A.'s rating, upon which the appellant refused to proceed further. On a rate being made, the appellant, on the same grounds, appealed to the sessions, and served A. and B. with notices. It was objected on the hearing by B. that the appellant had not complied with sec. 1 of 27 & 28 Vict. c. 39, not having failed to obtain relief in respect of him. The appellant then offered to abandon his appeal respecting B.'s rating, and to proceed with that against A. The sessions refused, but the High Court held they were bound to hear. This authority may be considered as overruling *R. v. Cambridgeshire (sup.)*.

Upon the respondent's dying pending an appeal, the more material case would arise in a bastardy appeal, where the Act requires the evidence of the mother (the respondent) to be heard as of necessity; this point is discussed under the title "Affiliation," see *infra*, p. 47. Respondent dying.

In a case where the defendant, a bricklayer, had died before argument on a *certiorari*, to bring up a conviction for not building party walls according to the statute, the court, notwithstanding, went on and confirmed the conviction. *R. v. Roberts*, 2 Str. Rep. 937.

Notice of Appeal.

Where an appeal is given (unless the decision of the justices can be reviewed on a special case stated under Jervis's Acts, on some point of law on agreed facts, for the opinion of the High Court), the appeal is the only remedy to the party aggrieved; where there is the statutable remedy it must be followed: see *Atkinson v. The Newcastle and Gateshead Waterworks Company*, 2 Ex. D. 441; 46 L. J. Exch. 775; 36 L. T. 761, C. A. In an action for trespass for executing a warrant of distress upon a poor rate, the first point was "whether the rate was good and sufficient:" on which Lord Mansfield, "finding that the parties were about to speak to it, took notice that all about the rate was clearly out of the case, for if they were bad the parties who thought themselves aggrieved should have appealed:" *Hutchins v. Chambers*, 1 Burr. 580; see also *Brunell v. Brighton*, 5 T. R. 182; *Durrant v. Brys*, 6 T. R. 580; *Cortis v. The Kent Waterworks*, 7 B. & C. 314. If an order *unappealed* upon is good on its face, it is an answer and sufficient defence in an action of trespass on a seizure of goods for disobedience of the order. The question of liability must be raised on an Where an appeal given, it is the only remedy to be followed.

appeal, *excepting the justices have acted wholly without jurisdiction.* *Fawcett v. Fowles*, 7 B. & C. 394; see also *Durrant v. Boys*, 6 T. R. 580.

Rate not to be disputed in replevin without appeal. In an action of replevin for taking goods the defendant justified the taking as under a distress for a poor rate. The plaintiff had visible personal property in the parish, on which he had been rated, and had not appealed against the rate, which, looking to the words of the Stat. 43 Eliz. c. 2, s. 1, the magistrates had power to make; the "ability" to pay was for the judgment of the overseers, subject to an appeal to the sessions: it was held replevin would not lie, the plaintiff not having appealed, and he could not raise the question in an action: *Marshall v. Pitman*, 9 Bing. 595; see also *R. v. Gloucestershire*, 29 L. J. M. C. 117; *Luton Local Board v. Davis*, *ib.* 173; *R. v. Bradshaw*, *ib.* 176; *Ex parte May*, 31 L. J. M. C. 161; *Mersey Docks Board v. Jones and Cameron*, 30 L. J. M. C. 185, 194.

Distinction where rate nullity. Where, however, the rate is a nullity, as from not having been "published" or otherwise, it may be disregarded, and action on it defeated without appeal: *Millward v. Caffin*, 2 Wm. Black. 1330; *R. v. Newcombe*, 4 T. R. 368; *Lord Amherst v. Lord Somers*, 2 T. R. 372; and no grievance would have existed on which to appeal: see *ante*, p. 108.

Lord Denman, in *The Churchwardens of Birmingham v. Shaw* (10 Q. B. 868), held, that there having been no appeal, there was no way open for questioning the rate; and laid down the test in such cases to be, whether the Act sought to be impugned was within the jurisdiction of the persons doing it, or *ab initio* null and void. See also *Nicholls v. Walker*, Cro. Car. 394; *Weaver v. Price*, 3 B. & Ad. 409; *Sibbald v. Roderick*, 11 A. & E. 38.

Notice of appeal in all cases, by statute or implication. A notice of appeal is in the nature of a process; it is notice of what one court has decided and which authorises another court to proceed: Erle J., *R. v. Middlesex*, 5 D. & L. 580. When the statute giving the right of appeal to a party aggrieved is silent as to serving the respondent with notice, there is an implied condition precedent to the hearing that notice of appeal should be given to the party interested in supporting the act complained of. Such notice should be a reasonable one as to time, given without unnecessary delay, and in conformity with any rule which may have been made by the quarter sessions: see *Ex parte Blues*, 5 E. & B. 291, 299; 24 L. J. M. C. 138. The rule of sessions, however, must not be inconsistent with the statute, as by requiring notice to be given to the justices convicting, and

thereby introduce a new condition not to be inferred under the statute: see *R. v. Staffordshire JJ.*, 4 A. & E. 842 (on the repealed Act, 53 Geo. 3, c. 127, s. 3). When the rule of sessions is reasonable, the High Court will not interfere with it: *R. v. Cambridgeshire JJ.*, 1 L. M. & P. 47; 19 L. J. M. C. 130; *R. v. Kesteven JJ.*, 3 Q. B. 810; 13 L. J. M. C. 78; 12 & 13 Vict. c. 45, s. 9. In some instances the entering into the recognizance required by the statute to prosecute the appeal had been held sufficient notice of the intention to appeal to the respondent; this was so where the respondent interested in the conviction must, in the course of events have been aware of the recognizance being entered into (a): see *R. v. Essex JJ.*, 4 B. & Ald. 276; *R. v. Kent JJ.*, 6 M. & S. 258.

In *Ex parte Blues* Lord Campbell remarked: "We are not called upon to decide what notice of appeal is required under the circumstances, but we wish it not to be supposed that the court acquiesce in the rule said to be laid down by Bayley, J., in *R. v. Essex JJ.*, that if an Act of Parliament giving an appeal against a conviction does not prescribe a notice in terms, there is no occasion to give notice of appeal to the opposite party. Bayley, J., does not lay down such a universal rule. In that case the Act required the party to enter into his recognizances to prosecute the appeal, and the opposite party must have known, from his so doing, that it was the intention of the party to appeal, and further notice was considered unnecessary. Notwithstanding *R. v. Essex*, notice of appeal should be served on the opposite party. The reasonableness of the notice is for the sessions." See this point fully discussed under the Summary Jurisdiction Act, 1879 (*post*), when reviewing the more recent case of *R. v. Salop*, 50 L. J. M. C. 72, and notice required when the bare right of appeal is given by a "*past Act*" against a conviction.

Where a statute directs the justices to inform the party that he can appeal against the convictions, they should not only do so, but should inform the party of the notices he would be required to give of his intention to appeal, and that he should enter into his recognizances to prosecute the appeal; or the notice of appeal may be dispensed with: per Lord Kenyon, C.J., *R. v. Leeds JJ.*, 4 T. R. 583. But where the party has declined to appeal there is no occasion for them to go through the nugatory act of informing him

Ex parte Blues,
overruling
R. v. Essex
and *R. v. Kent*.

Party convicted to be informed by justices he may appeal; and of notice required on conviction. This warning may be waived by defendant.

(a) Some statutes provide that the entering into recognizance before a justice is notice to him. See *ante*, p. 44.

of what he must do to appeal: *R. v. Yorkshire JJ.*, 3 M. & S. 493.

Statutable
notice to be
followed.

When the particular statute prescribes the form of notice of appeal to be given, such requirement must be strictly followed, unless the case falls within Baines' Act (12 & 13 Vict. c. 45), when the directions of that Act must be observed: see *R. v. Maule*, 41 L. J. M. C. 47.

Sessions
rules must
be reason-
able and
not contra
to statute.

But although the Quarter Sessions have a discretionary power to make rules for the governance of their own sessions—see *R. v. Wiltshire*, 10 East, 404; *R. v. Lancashire*, 7 B. & C. 691—the rules they seek to enforce must be reasonable to give them jurisdiction to entertain an appeal, and of this they are not the exclusive judges; for in some instances the High Court will see that they act legally and in accordance with the jurisdiction they possess. *R. v. Yorkshire W. R.*, 5 B. & Ad. 667.

The words of a statute cannot be affected by any rules of sessions: *R. v. Yorkshire W. R.*, 4 B. & Ad. 685; 5 B. & Ad. 667; see also *R. v. Lincolnshire*, 8 B. & C. 548. Nor can the sessions add a condition which is not imposed by the statute. *R. v. Pawlett*, L. R. 8 Q. B. 491; 42 L. J. M. C. 157; 29 L. T. 390; see also Bailey, J., in *R. v. Salop*, 4 B. & Ald. 626-9; *R. v. Norfolk*, 5 B. & Ad. 990; *R. v. Surrey*, 3 N. S. C. 531.

Nor make
rules which
will de-
prive them
of their
statutable
discretion.

The High Court will not recognise a general rule of sessions that in no case will they allow more than 40s. costs; on mandamus they were required to exercise their "discretion." See Coleridge's, J., remarks in *R. v. Glamorganshire*, 19 L. J. M. C. 172; see also *R. v. Nottingham*, 1 Sess. Ca. 442.

Construc-
tion of
notice for
sessions.

The construction to be put upon it is for the sessions in their discretion to determine; the High Court will not interfere with such discretion so long as the construction put upon it is one which the document will reasonably bear: *R. v. Cambridgeshire JJ.*, 1 L. M. & P. 47; 19 L. J. M. C. 130. Before the High Court will interfere it must appear that the sessions have decided wrongly in declining to exercise a jurisdiction imposed on them by law. Their judgment can otherwise only be reviewed on a case stated by them on facts found by them for the opinion of the court: see *R. v. Kesteven, Lincolnshire*, 3 Q. B. 810; 13 L. J. M. C. 78, overruling *R. v. Carnarvonshire*, 2 Q. B. 325; 11 L. J. M. C. 3; *R. v. Yorkshire W. R.*, 2 Q. B. 331 (*Keighley v. Wilsden*). *R. v. Carnarvonshire* turned on a misapplication of the term "preliminary objection." The court will not consider the reasons for the decision of the sessions, however erroneous on

facts : *R. v. Yorkshire W. R. JJ.* ; *Longwood v. Halifax*, 11 L. J. M. C. 57 ; *R. v. Kent JJ.*, 41 *J.P.* 263 ; *R. v. Middlesex JJ.* *Slade's case*, 2 Q. B. D. 516 ; 46 L. J. M. C. 225 ; 36 L. T. 402 ; 25 W. R. 610.

In the case *R. v. Denbighshire*, 9 Dowl. 509, the notice of appeal described the order of removal as made by H. R. Candy and another magistrate, instead of B. Candy (there being two justices in the county with those initials); the sessions refused to hear the appeal on the ground of the variance. Williams, J. granted a mandamus to the sessions to hear the appeal, saying : "The parties to the order and the pauper are correctly described. Who could doubt that this is a valid order made by persons of competent authority? The case is different from questions of variance in setting out an agreement or a deed in a declaration. It is a total perversion of terms to consider this like a description in pleading: it is nothing of the kind. The object of the notice of appeal is to give the opposite party notice that the appellants have been aggrieved by an order of removal, perfectly agreeing in description and other respects with the one actually made. But the sessions have got into *apices juris*, and nice questions of variance, instead of doing what would be more consonant with the justice of the case." These remarks were subsequently characterised by Lord Denman as "*sound sense*:" *R. v. Oxfordshire JJ.*, 4 Q. B. 177—181 ; see also *R. v. Carmarthenshire*, 4 B. & Ad. 563, where the variance (held immaterial) was in describing parish officers as of a parish instead of a hamlet in the parish: such a notice could not mislead.

The omission of the names of the justices who had made the order was held immaterial. The grievance was the order: *R. v. West Houghton*, 5 Q. B. 300 ; *R. v. Middlesex JJ.*, 15 L. J. M. C. 101 ; 2 N. S. C. 341 ; *R. v. Liverpool (Recorder)*, 15 Q. B. 1070.

The Act 12 & 13 Vict. c. 45 (commonly known as Baines' "Baines' Act"), was passed to provide for the uniformity of ^{Act.} practice at quarter sessions in the giving of notices of appeals in *certain* cases :—

The first sec. of the Act enacts :— "That in every case of Notice of appeal (except as hereinafter mentioned) to any court of ^{appeal.} general or quarter sessions of the peace, *fourteen* clear days' notice of appeal at least shall be given, and such shall be sufficient notice, any Act or Acts or any rule or practice of any court or courts to the contrary notwithstanding ; and such notice of appeal shall be in writing, signed by the per-

son or persons giving the same, or by his, her or their attorney, on his, her or their behalf, and the grounds of appeal shall be specified in every such notice: provided always, that it shall not be lawful for the appellant or appellants on the trial of any such appeal to go into or give evidence of any other ground of appeal besides those set forth in such notice."

Excep-
tions to
Baines' Act
(sec. 2).

Certain appeals are exempted, as mentioned in the second section:—"That none of the provisions *hereinbefore* contained relating to notices of appeal shall be construed to affect or alter the law as to notice of appeal against a summary conviction, or against an order of removal, or against an order under any statute relating to pauper lunatics, or against an order in bastardy, or against any proceedings under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes, or post-office; but the law with regard to notices of all such appeals shall be deemed and taken to be the same as if the provisions hereinbefore contained had not been enacted."

R. v. Lancashire.
(*Swift v. Lancashire.*)
R. v. Maule.

Notwithstanding the very clear object of the statute to secure uniformity as to the time of giving notice of appeal in all cases (other than those specified in the 2nd section), and as to which Hannen, J., remarked, "no more appropriate language could be used," some text-books have continued to note the more limited time of *ten* days under the Highway Act, 5 & 6 Will. 4, c. 50, s. 88, as being *the* time for giving notice of appeal under that Act, and for which the authority quoted is *R. v. Lancashire JJ.*, 27 L. J. M. C. 161: reported in 22 W. R. 76 (Q. B.) as *Swift v. Lancashire JJ.* The *ten* days' notice had been given in that case, but the decision was upon another point, and no objection was raised on the want of proper notice. In *R. v. Maule*, 41 L. J. M. C. 47, however, it was held that the Highways Act, 5 & 6 Will. 4, c. 50, s. 88, *was* governed by Baines' Act (*a*) (notwithstanding that sec. was recognised and continued by 25 & 26 Vict. c. 61, s. 44), and that it *was* requisite to give the 14 days' notice of appeal in all cases where the appeal was not within the exceptions in Baines' Act, s. 2 (*b*). See also *R. v. Surrey JJ.*,

(*a*) The Reporter in the L. J. explains that the case was reported in consequence of text writers continuing to erroneously state that ten days' notice is sufficient; see the later eds. of Leeming and Cross, Quarter Sessions, p. 402; and Baker on

Highways, p. 122.

(*b*) In cases of appeal under the Sum. Juris. Act, 1879, 15 days' notice of appeal is required. But Baines' Act does not apply to appeals on convictions as erroneously assumed in *R. v. Salop*, 50 L. J. M. C. 72.

39 L. J. M. C. 49 ; L. R. 5 Q. B. 87, to which Hannen, J. referred as confirming their judgment in *R. v. Maule*. The only question in *R. v. Lancashire* or *Swift v. Lancashire* was whether the notice of appeal had been rightly served as for the divisional adjourned sessions at which the appeal would be heard, or should have been served in reference to the first day of the original sessions. And the only point decided was (following *R. v. Sussex JJ.*, 34 L. J. M. C. 69 ; 13 W. R. 471 ; 4 B. & S. 966) that the notice must be given in reference to the original sessions (in the words of the judgment in *R. v. Sussex*, and repeated by Blackburn, J.), "in order that the appeal might be properly commenced," and that when so begun the appeal would be governed by the rules of practice of the particular court. The ten days' notice had alone been given, but no objection was taken on that account on the point raised.

Some notices may be sent by post as under 14 & 15 Vict. Notice by
c. 105, s. 10, relating to orders of removal ; the service then post.
is made on the day which, in the ordinary course of post, the letter would be delivered. *R. v. Richmond*, 27 L. J. M. C. 197 ; E. B. & E. 253 ; *R. v. Slawstone*, 18 Q. B. 388 ; 21 L. J. M. C. 145. Delivery through the post on a Sunday, if there should not be fourteen days at least without it, that day will be counted as a *dies non*, and the notice bad. *Ex parte Ashford*, 16 J. P. 759 : see *Asprell v. Lancashire JJ.*, 16 Q. B. 1067 ; in *R. v. Middlesex JJ.*, 2 Dowl. N. S. 719 ; 7 Jur. 396. Williams, J., held Sunday to be included with some doubt : in that case the full time was six days. In *R. v. Middlesex JJ.*, 5 Dowl. & L. 580 ; 3 N. S. C. 152, the appeal was under the bastardy law, and the order was made on Saturday at five p.m. ; notice of appeal given at ten o'clock on Monday morning, was held to be within the twenty-four hours, Sunday not being reckoned in the time allowed.

In *Ex parte Simkin*, 29 L. J. M. C. 23 ; 2 E. & E. 392, under sec. 40 of 18 & 19 Vict. c. 121 (the Nuisance Removal Act, 1854), fourteen days are allowed for giving the notice of appeal, and the appellant "shall within two days of such notice enter into a recognizance," &c. It was held that Sunday was to be counted in the two days ; time was then under his control. See also *Peacock v. The Queen*, 4 C. B. R. N. S. 264 ; 27 L. J. C. P. 224 ; *Rowberry v. Morgan*, 9 Ex. R. 730 ; 23 L. J. Ex. 191.

Since the Judicature Act, 1875, where the time allowed for appealing in cases in the High Court is less than six days, Sunday, Christmas Day, and Good Friday are not

Time for
giving
notice when
Sunday
counted.

4 Ch. D.
794, 46
L. J. Bk.
80.

reckoned in the computation of time: Order LVII., Rule 2; *Ex parte Viney, in re Gilbert*, C. A. And where the time expires on a Sunday, or other day on which the offices are closed, and by reason thereof proceedings cannot be done on those days, so far as regards the doing the same, they shall be done on the day the offices shall next be open: Order LVII., Rule 3; *Taylor v. Jones*, 45 L. J. C. P. 110; 1 C. P. D. 87. These rules may have some influence in fixing Sunday, generally, as a *dies non*.

On pauper
removal,
how days
for notice
of appeal
calculated.

It has been held that under the Poor Law Act, 11 & 12 Vict. c. 31, s. 9, appellants have *not* the twenty-one days plus fourteen, after the delivery of the depositions for exercising their right of appeal where the sessions commence within thirty-five days after the service of the order of removal. Before entering and respiting the appeal under this statute, the sessions will consider (as they should in all other cases) whether there has been unreasonable delay by the appellant, *R. v. Sussex*, 34 L. J. M. C. 69; 4 B. & S. 966, overruling on this point *R. v. Suffolk JJ.*, 4 Ad. & E. 319, and cases founded on it; see also *R. v. Yorkshire W. R. (Broomsgrove v. Halifax)*, 27 L. J. M. C. 269; *R. v. Sussex* 30 L. J. M. C. 73.

R. v.
Suffolk,
4 A. & E.
319.

The *R. v. Suffolk*, 4 A. & E. 319, held that under 4 & 5 Will. 4, c. 76, ss. 79, 81, the old practice with regard to giving notice of appeal was not altered. The quarter sessions were holden in four divisions in the county. Appeals were heard in the division only in which the cause of appeal arose. The decision in that case turned on a question of *time*. The appellant was allowed the full time of thirty-five days, under the Poor Law Acts, for giving his notice of appeal.

11 & 12
Vict. c. 76,
s. 9.

It was that point that *R. v. Sussex*, 4 B. & S. 966, overruled *R. v. Suffolk*, the 4 & 5 Will. 4, c. 76, being supplemented by 11 & 12 Vict. c. 31, s. 9, fixing the maximum of delay to twenty-one days after the service of the notice of chargeability with statement of the grounds of removal, after which the appeal was barred. The 11 & 12 Vict. c. 31, was passed to remedy the decision in *R. v. Suffolk*, 4 A. & E. 319; and *R. v. Cornwall*, 6 A. & E. 894.

Various
expressions
of time for
appealing.

Various expressions are used in the statutes directing the time for the giving notices of appeal. "*Immediately*," means with promptness, and, like "*forthwith*," without any unreasonable delay. *R. v. Huntingdonshire JJ.*, 5 D. & Ry. 588; *R. v. Aston*, 4 N. S. C. 283; 19 L. J. M. C. 236; *R. v. Worcestershire JJ.*, 7 Dowl. 789. See also Ca. temp.

Hard. 113; 8 M. & W. 287; *Spenceley v. Robinson*, 3 B. & C. 658. Coleridge, J., said that the words "shall forthwith give a second notice," must mean without such delay as cannot be satisfactorily accounted for: *Ex parte Lowe*, 2 N. S. C. 331; 3 D. & L. 737. See *R. v. Cheshire JJ.*, 11 Jur. 170; see also *R. v. Milverton, Lord of the Hundred*, 3 A. & E. 284; *Hancock v. Somes*, 1 E. & E. 795; 28 L. J. M. C. 196, reflecting on *R. v. Robinson*, 12 A. & E. 672. See also *R. v. Berkshire*, 4 Q. B. D. 469; *ante*, p. 45.

"Ten days," means one day inclusive and one day exclusive: *R. v. Yorkshire JJ., W. R.*, 4 B. & Ad. 685; *R. v. Goodenough*, 2 A. & E. 463; S. C. *eo nom.*; *R. v. Cumberland*, 4 Nev. & Man. 378; *R. v. Shropshire, Tibberton v. Newport*, 8 A. & E. 173; *Young v. Higgon*, 6 M. & W. 49; *Hardy v. Ryle*, 9 B. & C. 603; *Pellew v. Hundred of Wondford*, 9 B. & C. 134.

"Ten clear days," means ten perfect intervening days between the act done and the first day of the original sessions: *R. v. Herefordshire JJ.*, 3 B. & A. 581; *Roberts v. Stacey*, 13 Ea. 21; and cases, *supra*, under "Ten days."

"Ten days at least," has a similar interpretation to "ten clear days." See *Zouch v. Empsey*, 4 B. & Ald. 522; R. G. H. T. 6 Will. 4. *In re Prangley*, 4 A. & E. 781. Thus if service is on the 20th, and the hearing on the 30th, the proceeding is without jurisdiction: *Mitchell v. Foster*, 12 A. & E. 472.

As to "within 21 days from," or "of," and "after the expiration of 21 days next after," the time is to be reckoned exclusively of the day of receipt of the notice, or of the first day of sessions. See *Williams v. Burgess*, 12 A. & E. 635; S. C. 9 Dowl. 544; *Robinson v. Waddington*, 13 Q. B. 753, founded on *Ex parte Fulcon*, 5 T. R. 283. The time will date from that when the appeal should be entered: *R. v. Middlesex*, 2 N. S. C. 73. And although the entry of the appeal for convenience may be made on the first day of an adjourned divisional sessions, still the notice must date as from the first day of the original session from which the adjournment takes place. See Lord Blackburn's remarks in *Swift v. Lancashire*, 22 W. R. 76; S. C. *R. v. Lancashire*, 34 L. T. 124.

The word "month" means a *calendar* month in all Acts "Month." passed after Lord Brougham's Act, 13 & 14 Viet. c. 21, s. 4, unless words are added showing that *lunar* months are intended.

The courts will not hold too strictly to the limit of time, but will consider the circumstances, and not force the ap-
Limit of time apply-

ing to the next practicable sessions. appellant to appeal to a sessions which is not reasonably practicable.

R. v. Surrey, 50 L. J. M. C. 10 ; 6 Q. B. D. 100.

An instance of this kind occurred, as reported recently in *R. v. Surrey JJ.*, 50 L. J. M. C. 10 ; 6 Q. B. D. 100.

That case was on an appeal by Messrs. Smith & Sons, on the rating of the railway-station bookstalls in their occupation. The appeal was made against a rate which had been made on March 20th, and published on the next day, the 21st. On the 19th February the provisional list had been made out under the Metropolis Valuation Act, 1869 (32 & 33 Vict. c. 67), in which the Messrs. Smith were rated for their bookstalls. They received notice on February 20th to give notice of any objection before March 4th. Notice of objection was duly given, and, on the hearing of this case by the Assessment Committee, their objections were overruled. The *next* quarter sessions after the making the rate were to be held on the 6th April, so that the appellants had only the day after the rate was published (a Sunday) to determine on their appealing, and giving notice of appeal. Two points were raised in argument, 1st, that the appeal should have been entered and respite at the April sessions ; or, 2nd, whether in addition to the actual number of days fixed by the statute for the notices, the appellant, before being driven to enter his appeal, might take a reasonable time to consider whether such notices should be given. Manisty and Bowen, JJ., held that the entry of the appeal was a ceremony which might be omitted without infringing on the Act ; and that the *next* sessions meant, the next sessions (*a*) at which an *effectual* trial could be had, and for which proper notices could be given. And they said they preferred the authorities which had so held to those which implied the contrary, and referred to *R. v. Kent*, 8 B. & C. 639 ; and *R. v. Devonshire*, *ib.* 640. On the second point they held that the appellant is, before he enters upon an appeal, or gives his notices, to have some fair and reasonable time to consider his position, and make up his mind whether he shall take the first step towards appealing, and to consider the grounds on which such appeal is to be heard, and which are to bind him on the hearing. It was truly remarked that the authorities had in their power the means of preventing all possible inconvenience in this respect by taking care so to publish a rate as to enable all appellants

Meaning of "next sessions."

(*a*) See Sum. Juris. Act, 1879, sec. 32, in all cases the "next sessions" means the "next practicable sessions."

to have breathing time to look about them, and to consider and frame their grounds of appeal (a).

R. v. Surrey JJ. (last referred to), followed previous decisions. In *R. v. Dorsetshire*, 15 East, 200, the overseers' accounts were not allowed until the last day, when an effectual notice of appeal to the then next sessions could be given; the court considered the case carried with it marks of design to defeat the appeal. In a similar case Lord Ellenborough said, "Way did the parish officers make their rate so close upon the time of the sessions? It appeared as if they had done it with a view of ousting the parties of their appeal." *R. v. Sussex JJ.*, 15 East, 206. The court will look to the delay on the part of the respondents in having abridged the time for the appeal; for where a delay has been caused by one party the most favourable construction will be adopted as it regards the others. *R. v. Southampton JJ.*, 6 M. & S. 394. Under such circumstances the appellant will not be called on to enter and respite the appeal and incur a useless expense without conferring any benefit on either party. *R. v. Essex*, 1 B. & Ald. 210; *R. v. Kent JJ.*, 8 B. & C. 639 n; *R. v. Herefordshire JJ.*, 8 D. P. C. 646.

But the appellant must not by lying by deprive himself of the power of giving an effectual notice of appeal, or of sending grounds of appeal within due time, and thereby render the sessions impracticable which would otherwise have been practicable. *R. v. Sussex JJ.*, 34 L. J. M. C. 69, 75; see *R. v. Yorkshire, W. R., JJ.*, E. B. & E. 713; 27 L. J. M. C. 269; *R. v. Sevenoaks*, 7 Q. B. R. 136; 14 L. J. M. C. 92; *R. v. Skircoat*, 2 E. & E. 185; 28 L. J. M. C. 224.

At the same time that the time of holding the sessions will be considered, so also the distance at which the sessions town is situate will be taken into consideration in allowing the parties a reasonable time to look around to see whether they will appeal or not. The sessions to be practicable or reasonable for the appeal must be so for *all* purposes. See *R. v. Surrey JJ.*, 2 N. S. C. 155; *R. v. Flintshire JJ.*, 7 T. R. 200; *R. v. Southampton JJ.*, 6 M. & S. 394; *R. v. Kent JJ.*, 8 B. & C. 639.

(a) The sessions are not bound to receive and adjourn an appeal at "the next sessions" if they think the appellants had sufficient time to come prepared to try it, and to give notice to the respondents: *R. v. York, N. R. JJ.* 3 T. R. 150. "If by reason-

able diligence the appellants might bring on the appeal to be heard, the sessions at which the appeal might be so brought on are to be considered the next practicable sessions," Lord Campbell, C. J.: *R. v. Peterborough*, 26 L. J. M. C. 153.

"Next sessions" made impracticable by act of respondent. Delay in publishing the rate.

Sessions must not be rendered impracticable by act of appellant.

Distance of sessions town to be considered.

Case should
be heard
when
sessions
practicable.

When the sessions *are* practicable for the hearing the appeal, it should either be heard or be entered and respited at them. See *The Liverpool Gas Co. v. Everton Overseers*, 40 L. J. M. C. 104; L. R. 6 C. P. 414. But where, by the shortness of the time to consider whether the appeal should be made, the sessions are not reasonably practical, then the parties are not bound to go to the expense of entering the appeal simply for the respite. See *R. v. Surrey (supra)*, p. 126.

Where no
specific
time
pointed out
by the
statute
within
which to
appeal.

Where the statute points out no specified time for making the appeal, and the case does not fall within the provisions of Baines' Act, or under the "conditions and regulations" of the Summary Jurisdiction Act, 1879, the appeal must be made within a reasonable time; see *R. v. Trafford*, 15 Q. B. 200; and with a reasonable notice; *In re Blues*, 5 E. & B. 291; 24 L. J. M. C. 138. On this point an important construction has been put on the Summary Jurisdiction Act in *R. v. Salop*, 50 L. J. 72; S. C. *R. v. Shropshire*, 6 Q. B. D. 669 (a); where it was held that where a statute gave only the bare right of appeal, without providing any "conditions and regulations" of procedure, the parties must, "by the force of sec. 32, fall back upon" the "conditions and regulations" in sec. 31 of the Summary Jurisdiction Act, 1879. But in that case, it is to be observed, no notice was taken by the Bench, or by counsel in argument at the bar, of sec. 19 of the Summary Jurisdiction Act, 1879, or of *In re Blues*, or that sec. 32 only rendered sec. 31 (which excluded from its operation "past" Acts) applicable to a "past" Act at the option of the appellant; see *R. v. Montgomeryshire*, 51 L. J. M. C. 95; see this case considered *post* under Tit. "Summary Jurisdiction Acts."

For notice
of appeal
appellant
only to look
to first day
of original
sessions.

The appellant is not bound to lodge his appeal during the current, or adjourned sessions. He is alone to look to the *first day* of the original sessions to see if the sessions be practicable for his appeal: *R. v. Surrey JJ.* 1 M. & S. 479. The appeal *may*, however, be *entered* and respited at an adjourned sessions, instead of the original sessions, where the practice of the sessions permits it: *R. v. Sussex JJ.*, 7 T. R. 107; *R. v. Sussex JJ.*, 34 L. J. M. C. 69—75; 2 B. & S. 683. In this latter case of *R. v. Sussex* (a case in error from the Q. B.) the court did not deal with the question whether a

(a) It was assumed in *R. v. Salop* that Baines' Act would have applied; the Court omitting to notice that that Act, by sec. 2, did not apply to convictions.

sessions held in one division of a county by adjournment could be treated under the practice of the sessions as an original sessions; nor did the court interfere with the rule as laid down in *R. v. Sussex*, 7 T. R. 107, that the next sessions after service of the order of removal (now the service of the notice of chargeability), having jurisdiction over an appeal against it, must be ascertained *by reference to the date of the original sessions* for the county, and not of any adjournment thereof. But the court held that when, for practical convenience, the county is divided into distinct divisions, and in each division a distinct court is held, so that all the questions locally arising within each division by practice belong to that division, and all the process for that division is returnable at the court for that division, and the panels of the jurors are made out for that division, and the *rules of practice* made by the court of each division for the conduct of business in it, assume that the day when the court for that division begins its sittings is the first day of the session for *that* division, the Court of Appeal said, they saw good reason for holding that the conduct of an appeal suit *which had been properly commenced* (a), and which belonged to one of those divisions, should be governed by the rules of practice of that division, in the same manner as the notices, summonses and proceedings, other than those relating to appeals against orders of removal and poor rates, are governed thereby.

Rules of adjourned divisional court do govern the hearing the appeal which has been properly commenced.

In *Swift v. Lancashire JJ.*, 22 W. R. 76, Blackburn, J., remarked on *R. v. Sussex*, 34 L. J. M. C. 69; “Erle, C. J., in that case says ‘that the notice must be given to the *original* sessions in order that the appeal may be *properly commenced*, but *when* properly commenced it is governed by the rules of practice of the particular court’; this refers to *notice of trial* and the like; but the *notice of appeal* the Legislature has enacted must be to the original sessions.” See also *R. v. Draughton* referred to in 2 B. & S. 683.

In the subsequent case of *R. v. Lancashire*, 34 L. T. 124, Cockburn, L. C. J., referring to the older case of *R. v. Sussex*, 7 T. R. 107, followed by *R. v. Lancashire*, 27 L. J. M. C. 161; 30 L. T. 149 held (Mellor and Field, JJ., with him), that those cases were neither expressly or virtually overruled by the case in error, *R. v. Sussex* (*sup.*); and in his judgment he adopted the language of Lord Campbell, L. C. J., in *R. v. Lancashire*:—“We cannot take notice of the arrangements

(a) That is, by a due notice of appeal.

made in the county of Lancashire for the convenient administration of justice at the quarter sessions (*a*); and we can give no more effect to the notice than if the sessions had continued from the beginning, and until all the business of the county had been finished."

When the statute annexes to the right of appeal certain conditions precedent to be performed by the appellant they must be strictly complied with, or the appellant will have no *locus standi* to enter his appeal. *R. v. Lincolnshire JJ.*, 3 B. & C. 548; *R. v. Bedfordshire JJ.*, 11 A. & E. 134; *R. v. Cheshire*, *ib.* 139; *Ex p. Curtis*, (*Curtis v. Buss.*) p. 69.

When
verbal
notice of
appeal
required.

Under the affiliation Acts a verbal notice of appeal is sufficient if given within the twenty-four hours after the adjudication. (See title "affiliation"). But a written notice is requisite in all cases within Baines' Act, 12 & 13 Vict. c. 45. See *R. v. Salop JJ.*, 4 B. & A. 626 (under the Bastardy Act, 49 Geo. 3, c. 68, s. 5,) in which Bayley, J., remarked on the convenience that a notice of appeal, particularly where it is a notice of the cause and matter of the appeal, should be in writing; and added, that where the condition was that the party appealing should give notice of his appeal (*simpliciter*) it would be adding a further condition, to hold such notice should be in writing.

Reasonable
notice.

Requiring the notice to be "reasonable," will refer only to the *time* of serving the notice and not to the manner of giving it. *R. v. Surrey JJ.*, 5 B. & A. 539 (under the Act against gaming, 12 Geo. 2, c. 22). See *In re Blues*, *supra*.

How
entitled.

The notice should be entitled in like manner as the order to be appealed against. *R. v. Suffolk JJ.*, 1 B. & A. 640.

Must state
or show
party
aggrieved.

The appellant must specifically allege in his notice of appeal that he is a person in fact aggrieved or injured by the act of which he complains. *R. v. Essex JJ.*, 5 B. & C. 431; or he must set out facts from which it clearly appears that he is aggrieved personally, and not generally as one of the public. *R. v. Yorkshire*, 7 B. & C. 678; *R. v. Somerset*, *ib.* 681, n.; *R. v. Yorkshire*, 4 B. & Ad. 685; *R. v. Bond*, 6 A. & E. 905; *R. v. Blackawton*, 10 B. & C. 792. See *ante* on this point, p. 107.

Respon-
dent to be
fully
described.

The respondents should be properly described by names and additions. Justices should be described as justices of a county or borough, according to the fact. Parish officers may be described as churchwardens and overseers of a

(*a*) The sessions in Lancashire are held in several divisions by adjournments from place to place.

particular parish, &c., without naming them. Dick Q. S. 633.

Railway companies may be served through their secretary with notice addressed to the directors of the particular railway. 8 & 9 Viet. c. 18, s. 68. *Eastham v. Blackburn Railway*, 9 Ex. 758.

The sessions may amend any variance between a notice of appeal and orders appealed against. See *R. v. Bingley*, 4 B. & Ad. 567 n; *R. v. Carmarthenshire JJ.*, *id.* 563.

Besides setting forth his grievance, if appealing as the holder of any particular office, he should state in his notice he is the holder of such office. See Talf. Dick. Q. S. 633.

Care should be taken to describe accurately the sessions to which the appeal is to be made. But a misdescription of the session, if under all the circumstances the respondent could not be misled, may be treated as surplusage. *R. v. Liverpool (Recorder)*, 15 Q. B. 1070; *R. v. Buckinghamshire*, 4 E. & B. 259 n.; 24 L. J. M. C. 15 n.; *R. v. Leeds (Recorder)*, 30 L. J. M. C. 86; 3 E. & E. 561. In the case of *R. v. Liverpool*, the county justices having concurrent jurisdiction with the borough JJ., there being no ne intromittent clause in the Liverpool charter, made an order of removal from a township within the borough. Lord Campbell referred to 5 & 6 Will. 4, c. 76, s. 105, which gives the borough Quarter Sessions cognizance of all matters cognizable by any Court of Quarter Sessions in England; 13 & 14 Car. 2, c. 12, s. 2, and the statute making the place of appeal to depend on the place in which the justices acted, although the county justices acted, the removal was from the borough, and the appeal to the borough sessions.

Should, however, the appellants go to *the wrong* sessions, acting on the wrong notice, they will be debarred from going afterwards to the proper tribunal and treating the mention of the wrong sessions as surplusage. *R. v. Salop*, 4 E. & B. 257; 24 L. J. M. C. 14. The notice should be abandoned.

The respondents are entitled to reasonable information upon what the appellant intends to make his appeal. And the information must be given so that he is not misled, although the court will not construe such notice with all the strictness as if deciding on matters of pleading.

So where three defendants were jointly summoned and convicted in separate sums as to each, and *three* separate convictions were to be returned to the sessions, there was one joint notice of appeal as against "*a conviction of us*:" this was sufficient. *R. v. Oxfordshire*, 4 Q. B. 177.

Description
of the
appe'lant.

Description
of the
sessions.

Where
misdescrip-
tion, but
not mis-
leading.

Description
of the
matters
appealed
on.

So also where separate orders for the maintenance of twin bastard children and only *one* notice of entering into the recognizance, such notice was good although having reference to two orders. *R. v. Leeds (Recorder) ante*, p. 45.

Where the order is otherwise properly described but omitting the names of the justices—an objection on this ground cannot be upheld. *R. v. West Houghton*, 5 Q. B. 300. So where there was a discrepancy in the justices' names, Williams, J., said on the sessions entertaining the objection, that they had got into *apices juris* and nice questions of variance instead of doing what would have been more consonant with the justice of the case. *R. v. Denbighshire*, 9 Dowl. P. C. 509.

Signature
of a notice
by guar-
dians or
their clerk.

Every notice, statement, demand, or other document required to be given by guardians in respect of an order of removal will be deemed to be sufficiently authenticated if signed by their clerk in their name (*a*), 28 & 29 Vict., ch. 79, s. 8 (the Union Chargeability Act, 1865). This part of the section gives statutory effect to *R. v. Newport Guardians*, 33 L. J. M. C. 155, decided on 4 & 5 Will. 4, c. 76, s. 81, under which case the notice may be signed by any three or more of the guardians; see *R. v. St. Mary, Southampton*; *R. v. Lambeth*, 5 Q. B. 513; 14 L. J. M. C. 133.

By solicitor.

Although a solicitor may sign a notice of appeal on an order of removal on behalf of the overseers of the parish or the guardians, yet it was held that when the notice is accompanied with the *grounds* of appeal then the officers themselves must sign; *R. v. Middlesex*, 20 L. J. M. C. 42; *R. v. Suffolk*, 4 A. & E. 319; *R. v. Abergele*, 5 A. & E. 795; *R. v. Lancashire*, 11 A. & E. 144. But such notice since the Union Chargeability Act, 1865, may be signed by the clerk to the guardians.

Where by
the solicitor's clerk.

Under the appellant's authority a solicitor's clerk may sign a notice of appeal. *R. v. Kent*, L. R. 8 Q. B. 305; 42 L. J. M. C. 112.

By a
trustee.

A trustee of a turnpike road may sign a notice of appeal as a party aggrieved. *R. v. Surrey*, 5 A. & E. 701 n.

Solicitor to
a corpora-
tion.

The solicitor to a corporation may sign a notice of appeal on the part of the corporation, although not appointed under seal for that purpose. *Fariell v. Eastern Counties Ry. Co.*, 2 Ex. 344; 17 L. J. Ex. 223, 297.

A trustee.

So may a trustee sign a notice of appeal on behalf of himself or co-trustees (as under a turnpike trust), although

(a) See the same section for service of the grounds.

not personally aggrieved. *Cortis v. The Kent Waterworks*, 7 B. & C. 715.

Parish officers can only give a valid notice by the majority signing. *R. v. Warwickshire*, 6 A. & E. 873; *R. v. Derbyshire*, *ib.* 885; *R. v. Wymondham*, 6 T. R. 552. As to public bodies acting by a majority, see *Grindley v. Barker*, 1 B. & P. 236; *Withnall v. Gartham*, 6 T. R. 398; *Attorney-General v. Davy*, 2 Atk. 212; *R. v. Beeston*, 3 T. R. 592. They should sign in their public character, "as churchwardens and overseers;" see *R. v. Colerne*, 11 Q. B. 909; *R. v. Yorkshire W. R. JJ.*, 13 L. J. M. C. 39; S. C. *eo nom.*, *Ex parte Harnley*, 1 D. & L. 673. And having so signed it lies on the other side to show that those giving the notice are not a majority (per Williams, J.). *R. v. Yorkshire W. R.*, 3 D. & L. 152.

Joint notices of appeal may be given. In *R. v. White*, 4 T. R. 771, there was a joint appeal by seven appellants against a poor rate, and those cases were severally considered and decided upon. On the authority of that case it was held in *R. v. Sussex JJ.*, 15 East 206, that several ratepayers might jointly appeal against a rate as not being made in due proportion with the rating of the appellants. So there may be joint respondents as to any of whom the appeal may be abandoned and the remainder proceeded with: *R. v. Kent JJ.*, L. R. 6 Q. B. 132; 40 L. J. M. C. 76; 19 W. R. 205. As to a joint appeal on a conviction of three persons for an offence of unlawfully fishing, where three separate records of convictions were returned to the sessions, and the defendants severally entered into their separate recognizances, and the form of appeal was allowed; see *R. v. Oxfordshire JJ.*, 4 Q. B. 177. And see also Tit. Affiliation, *ante*, p. 45, where one notice of appeal was allowed on two separate orders made for the maintenance of twin bastard children.

In some cases a personal service of notices of appeal on individual justices is necessary. As under the Highway Acts the respondent justices must be *personally* served, or the notice be left at their respective residences: *R. v. Bedfordshire*, 11 A. & E. 134; and under the Licensing Act, 1829, *R. v. Cheshire*, *ib.*, 139, overruling *R. v. Staffordshire*, 4 A. & E. 842. So also where the justices form a court of summary jurisdiction under "The Intoxicating Liquor Acts" the members of the court must be personally served it is not sufficient to leave the notice with the clerk of the justices; *Ex parte Curtis* (S. C. *Curtis v. Buss*), 47 L. J. M.

C. 35 ; 3 Q. B. D. 13 ; 26 W. R. 210 ; see also *R. v. Sillifant*, 4 A. & E. 354.

Service on the clerk to the justices as Court of Summary Jurisdiction.

The same point would arise under the Highway and Locomotive Amendment Act, 1878 (c. 77), s. 37. So also under the Public Heath Act, 1875, it will be otherwise should a person convicted under these Acts *elect* to proceed under the Summary Jurisdiction Act, 1879. Under the Factory and Works Act, 1878, 41 & 42 Vict. c. 16 ; the Weights and Measures Act, 1878, 41 & 42 Vict. c. 49 ; the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, the notice of appeal for the justices *may* be served on the *clerk* of the Court of Summary Jurisdiction (see this subject discussed under Tit. "Summary Jurisdiction Acts").

Under the Excise Acts a service of notice of appeal on the clerk to the justices in their presence was held good service on the justices themselves, 7 & 8 Geo. 4, c. 53, ss. 61, 83 ; but a service of the notice on a clerk at the Office of Excise is not a good service on a respondent under 4 Vict. c. 20, s. 30, requiring the notice to be given to, or left at the place of abode of, the respondent seven days before the hearing of the appeal. *R. v. Eaves*, 39 L. J. M. C. 70.

Death of respondent.

The death of the respondent excuses service. *R. v. Leicestershire JJ.*, 15 Q. B. 88. See Tit. "Affiliation."

Service on overseer and justices.

Service on *one* overseer is sufficient, *R. v. Warwickshire*, 6 A. & E. 873, as they act conjointly ; but it is otherwise with justices, as each might be individually liable to an action. *R. v. Bedfordshire*, 11 A. & E. 134, 138.

Ground of appeal to be specified under Baines' Act.

In all cases under Baines' Act (12 & 13 Vict. c. 45, s. 1), and not excluded by sec. 2, all notices of appeal must specify the grounds of appeal, and the evidence on the hearing of the appeal will be confined to such grounds. See, however, as to the power of amendment, *infra*, p. 149.

Where Baines' Act does not apply, particular statute governs whether grounds requisite.

In the cases not within that Act (see sec. 2) the notice of appeal need not set out any grounds of appeal unless so required by the particular statute under which the appeal is made. *R. v. Westmoreland JJ.*, 10 B. & C. 226 ; *R. v. Derby (Recorder)*, 20 L. J. M. C. 44. See as to Appeals on Convictions, secs. 31, 32 ; the Summary Jurisdiction Act, 1869, and observations in *R. v. Salop*, (*infra*).

Specific objections to overseers' accounts.

It is not sufficient to object to specific items in overseers' accounts without stating the ground of such objections. *R. v. Sheard*, 2 B. & C. 856. And where the ground is that other persons are not rated in due proportion with the appellant, such persons must be served with notice of

appeal as well as the parish officers. *R. v. Eyre*, 7 Q. B. 619; 26 L. J. M. C. 14.

Baines' Act, 12 & 13 Vict. c. 45, was passed to create uniformity in practice (see *ante*, p. 120), and unless the appeal comes within the *exceptions* specified in the section of that Act, namely, as to a summary conviction, order of removal, or an order relating to a pauper lunatic, order in bastardy, or proceedings relating to H.M.'s revenue of excise, customs, stamps, taxes, or post-office; not only is the notice of appeal to be in writing, and signed by the persons giving the same, or their solicitor, *but the grounds of appeal shall be specified in such notice*, and the parties on the trial of the appeal will not be allowed to go into any other ground of appeal (*a*).

In some cases, as an appeal against an order in bastardy, no grounds of appeal are required.

In the removal of paupers under the poor laws the grounds of appeal are independent of the notice of appeal. But in every case where a notice of appeal has been given, the overseers or guardians of the appellant's parish (any three or more of such guardians), shall, with such notice, or fourteen days at least before the first day of the sessions *at which such appeal is intended to be tried*, send or deliver to the overseers of the respondent parish their grounds of appeal.

The statement of the grounds of appeal if from the overseers of the parish, could only be signed by them and not by solicitor on their behalf. *R. v. Worcester (Recorder)*, 5 Q. B. 508. But under the Union chargeability Act, 1865 (28 & 29 Vict. c. 79), s. 4, the signature of the clerk to the guardians in their name will be sufficient; and any other document so signed on their behalf, or addressed, or delivered to the clerk personally, or left at his office or sent through the post addressed to him at such office will be sufficient. See *R. v. Lambeth*, 5 Q. B. 513; 14 L. J. M. C. 133.

The time before which the grounds of appeal are to be served, is the fourteen days prior to *the hearing* of the appeal; and that time will be regulated according to the practice of the sessions, some appeals being heard at the divisional adjourned sessions; and in this is the distinction as to giving the notice of *appeal* the time for which must be calculated as

(*a*) The Summary Jurisdiction Act, 1879, is applicable in revenue and post office cases before a court of summary jurisdiction; but not to appeals. See sec. 53.

from the first day of the *original* sessions. See *R. v. Sussex JJ.*, 34 L. J. M. C. 69, 75.

R. v. Lancashire JJ., 27 L. J. M. C. 161; 30 L. T. 149; see Blackburn, J., remarks in *Swift v. Lancashire JJ.*, 22 W. R. 76, *ante*, p. 129.

As to appeals under the Summary Jurisdiction Act (see that title). So also with the other excepted matters from Baines' Act. See the respective titles in sec. 2.

Grounds of appeal should be clear and concise.

The statement in the grounds of appeal should be a clear and concise statement of the particular objections to the validity of the order or conviction appealed on either in fact or law. The setting out of matters of evidence should be avoided. Sufficient should be set out as will give the opposite party reasonable means for inquiry into the matters to be raised in issue. See *R. v. Derbyshire JJ.*, 6 A. & E. 893; *R. v. North Bovey*, 2 Q. B. 504.

Where unintentional mistake which cannot mislead.

An unintentional mistake by which the other side cannot be misled will not prejudice the appellants. *R. v. Aston nigh Birmingham*, 12 Q. B. 26.

Ground may be good without absolute precision.

The grounds of appeal may be good although absolute precision is not arrived at. Stating that a birth took place "in the parish of P., in or about 1810" is sufficient, as the parish registers could be searched for two or three years before or after that date. *R. v. Ealing*, 12 Q. B. 178 n. Stating the birth to have happened in a town consisting of several parishes is not sufficiently precise. *R. v. St. Mary, Beverley*, 1 B. & Ad. 201.

Ground of appeal not to be ambiguous.

Under the old repealed Bastardy Act 49 Geo. 3, c. 68, the ground of appeal was "against an order of affiliation whereby A. B. was adjudged the father of a bastard child born of, &c., and chargeable to, &c."; this was insufficient as not specifying whether the objection was to the parentage or chargeability. *R. v. Oxfordshire JJ.*, 1 B. & C. 279.

Objecting to overseers' accounts by stating the objection to be to thirty-five items without specifying which: held insufficient. *R. v. Sheard*, 2 B. & C. 856.

Knowledge of respondents may cure insufficient statement.

The question in all these cases is the materiality of the defective statement to the question in issue, and in this may be considered the knowledge of the respondents of the particular circumstance insufficiently stated. The appellants should, however, give as much information as they may possess showing good faith on their part. *Per Coleridge, J.*, in *R. v. Carnarvonshire JJ.*, 2 Q. B. 329.

Particular objection by statute

When the "ground" is that the provisions of a statute have not been complied with the particular provisions should

be pointed out which are intended to be relied on. *R. v. Whitley*, 11 A. & E. 90; and see per *Coleridge J. S. C.* p. 98. to be pointed out.

A general ground of objection, that an order, or conviction, &c., is bad on the face of it, without going into particulars, will let in any objections to defects in such order. *R. v. Middleton-in-Teesdale*, 10 A. & E. 688; *R. v. Flockton*, 2 Q. B. 535; *R. v. Witham*, 12 Q. B. 88. General objection to order of conviction.

The specifying particular objections will limit the appellant to those only. *R. v. Stapleton Fitzpaine*, 2 Q. B. 488; *R. v. Birmingham*, 8 Q. B. 410. So where there is a general traverse of the facts in an order without denying any particular fact the like rule applies. *R. v. St. Pancras*, 12 Q. B. 31; see *R. v. Widecombe-in-the-Moor*, 9 Q. B. 894. In this latter case a ground of appeal was that the pauper was not settled in the appellant parish "*in any manner whatever*." Under this ground the appellants could show the pauper was not born in their parish. Limit by specific objection.

Statements in the order which are not traversed either specifically, or as coming within a general traverse, will be taken as admitted; see *R. v. Hockworthy*, 7 A. & E. 492; *R. v. St. John, Margate*, 1 Q. B. 252. Admission where no traverse.

The sufficiency of the grounds of appeal is for the sessions alone to judge. *R. v. Kesteven*, 3 Q. B. 810; Baines' Act, 12 & 13 Viet. c. 45, s. 9. The decision of the court of general or quarter sessions upon the hearing of any appeal as to the sufficiency of the statement of any ground or grounds of appeal, and as to the amending or refusing to amend any order or judgment of a justice or justices appealed against, or the statement of any ground or grounds of appeal, and as to the substitution of any new recognizance or recognizances shall be final, and shall not be liable to be reviewed in any court by means of a writ of *certiorari* (a) or *mandamus*, or otherwise. Sufficiency of grounds of appeal question for sessions.

When the appeal is against a poor rate and no sufficient grounds of appeal have been given; see *inf.* p. 145, *R. v. Eyre*, and other cases there referred to on the entry and respite of the appeal, and the power of giving fresh grounds is discussed.

But where a notice of appeal has been given, it would be in the discretion of the sessions to allow an adjournment of the appeal that the appellant might serve fresh or amended Fresh grounds of appeal by

(a) Under the Sum. Juris. Act, 1879, s. 40, no *certiorari* is now required should "a case" be stated.

leave of
Sessions.

grounds of appeal: on the sessions refusing such adjournment, the court would not interfere. *R. v. Staffordshire JJ.* 2 Dowl. N. S. 353; 11 L. J. M. C. 9.

The Court to which appeal to be made.

The court to which the appeal must be made is the one having jurisdiction over the locality in which the order appealed against has been adjudicated upon; from the orders or convictions of county justices, to the county sessions, and from those of borough magistrates to the recorder of the borough.

County
quarter
sessions no
concurrent
jurisdiction with
borough
quarter
sessions.

The county justices have no concurrent jurisdiction to hear an appeal arising in a borough having a separate court of quarter sessions excepting in alehouse licensing appeals; and in which the county sessions have entire jurisdiction. In 8 & 9 Will. 3, c. 30, s. 6, 5 & 6 Will. 4, c. 76, s. 105, *R. v. Suffolk, Shropshire, and Lancashire*, 2 Q. B. 85; *R. v. Liverpool (Recorder)*, 15 Q. B. 1070; *R. v. St. Edmunds, Salisbury*, 2 Q. B. 72; *R. v. Deane*, 2 Q. B. 96; *R. v. Cockburn (Recorder)*, 4 E. & B. 265. See *ante*, p. 12.

Under 30 & 31 Vict. c. 106, s. 27 (The Poor Law Amendment Act, 1867), the appellate jurisdiction from an order of removal is dependent upon the jurisdiction of the justices by whom the order was made, and not upon the place from which the removal was ordered. *Dudley Union v. Wolverhampton Union*, 25 L. T. 829; S. C. *ex nom. R. v. Staffordshire*, L. R. 7 Q. B. 288; 41 L. J. M. C. 78; 25 L. T. 329; 20 W. R. 366. See *ante*, p. 130, *R. v. Liverpool (Recorder)*.

As to
lunatic
paupers.
Where
pauper in a
county
asylum.

Orders in reference to lunatic paupers (for maintenance or otherwise) are to be made by two justices of the county, when the pauper has been removed from a borough to the county asylum, but the guardians, &c., may appeal against the order in like manner as if the same were a warrant of removal (*a*). See 16 & 17 Vict. c. 97, ss. 1, 108.

The appeal may be to the borough sessions. *R. v. Lancashire JJ.*, 18 Q. B. 361; overruling *R. v. Lancashire*, 12 Q. B. 305.

The court
for appeal
in regard to

A lunatic pauper was sent from the Medway Union to the Barning Heath County Asylum, which is situate wholly within the borough of Maidstone, where there is a recorder

(*a*) Orders for the maintenance of lunatics are indirectly orders for their removal: *R. v. Glamor-*

ganshire, 13 Q. B. 561; *R. v. St. Peter's, Humber*, 17 Q. B. 630.

and a separate court of quarter sessions. The Medway Union consists of several parishes; some wholly in the city of Rochester, with a separate court of quarter sessions; some partly in Rochester and in the county of Kent; others wholly in the county. a lunatic pauper in an asylum.

An appeal was made on an order adjudging the pauper's settlement to be in the parish of Aldershot.

The appeal was made to the sessions for Kent, but that court declined to hear the appeal on the ground that it should have been sent to the recorder of the borough of Maidstone, in which borough the asylum was situate.

The appeal was under sec. 108 of 16 & 17 Vict. c. 97.

If the union extended into two several jurisdictions, then the persons appealing might not know to what sessions to appeal; the appeal, therefore, in that case is to depend on the place in which the asylum is situate; but the word "jurisdiction" in this part of the section must be taken with the previous part; and it clearly means "county."

Blackburn, J., had previously remarked:—"Is not the whole of the union in the county of Kent?" The words "in case such union extends into several jurisdictions," mean into several *counties*; in that case, in order that there may be no dispute to which sessions the appeal should be made, it is to be to the sessions of the county or borough in which the asylum is situate.

In *R. v. Warwickshire*, 28 L. J. M. C. 249, it was urged in argument by Bovill and Spooner, that the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, s. 105, giving the recorder exclusive jurisdiction at his borough quarter sessions to try all matters, and quoting *R. v. Suffolk*, *R. v. Shropshire*, 2 Q. B. 85; 10 L. J. M. C. 138; and that the order in question had been made by two of the borough justices, under 16 & 17 Vict. c. 97, s. 97; and that it was further argued that the two statutes should be read together. On this Lord Campbell, C. J., remarked:—"The second Act *expressly points out* the way in which the appeal is to be heard—viz., by the *county* justices." And further:—"If the parish is partly in one jurisdiction, and partly in another, then the situation of the asylum shall determine the tribunal for appeal, not 'when the parish or union is situate in two *co-ordinate* jurisdictions.'" And this view met with the support of Blackburn, J., and Lush, J., in *R. v. Kent*, L. R., 1 Q. B. 385; 35 L. J. M. C. 201.

Blackburn, J., said:—"I think the quarter sessions have not decided according to the true meaning of sec. 108,

which enacts, that 'if the guardians of any union or parish, or the overseers of any parish feel aggrieved by any order adjudging the settlement of any lunatic, they may appeal against it to the general quarter sessions for the county in behalf of which such order has been obtained, or in which the union or parish obtaining such order is situate.' " On this part of the section the case of *R. v. Warwickshire*, 28 L. J. M. C. 249, decides that where the parish obtaining the order is situate wholly in the borough which is within one county, though the parish is in the borough, the jurisdiction to hear the appeal is in the county sessions.

Then the section proceeds :—"Or in case such parish or union extend into several jurisdictions, then to the sessions of the county or borough in which the asylum is situated—the words "several jurisdictions" being read as "several *such county* jurisdictions."

The court of appeal under the Highway Acts.

The naming a wrong court may amount to surplusage.

An appeal, under the Highway Acts, 1835, sec. 88, is to be made to the Court of Quarter Sessions, holden for "the limit" in which the highway in question may lie. See further on this point, *infra* tit. "The Highway Acts."

Care should be taken to select the right court for which the notice of appeal is given; should a wrong court have been named, and *the parties appear* at that court, the mistake will not be considered as surplusage but will be fatal to the appeal. *R. v. Salop JJ.* 4 E. & B. 257; 24 L. J. M. C. 14. But in a case, where, on finding the mistake made of naming the county instead of the borough sessions, the appellants abandoned their appeal, it was held, by Crampton & Hill, JJ., on the authority of *R. v. Liverpool Recorder*, 15 Q. B. 1070 (*a*), that the Recorder of the borough had such a jurisdiction over the appeal, that on the abandonment, he could make an order giving the respondents costs. "The appellants," said Hill, J., "gave a notice of appeal, which they might have acted upon as a good notice to the borough sessions." Notwithstanding the mistake the respondents were entitled to suppose they might be called before the right tribunal. *R. v. Leeds (Recorder)*, 3 E. & E. 561; see also *R. v. Padwick*, 27 L. J. M. C. 113.

(*a*) See *R. v. Liverpool the County Justices*, having concurrent jurisdiction to make an order for the removal of a pauper within the borough (there being no non-intromittent clause in the borough charter), made an order for the

removal of a pauper from within the borough: the appeal should have been made to the Recorder of Liverpool, who had *sole* jurisdiction under 5 & 6 Will. 4. c. 76, s. 105 (see this case *ante*, p. 131).

When notice of appeal has been given, there is usually a Notice of trial. practice at the sessions for the appellant to give notice of his intention to try the appeal at the then next sessions, and which notice must be given within certain days of the sessions. This practice at each sessions as to the number of days allowed varies, and enquiries should be made in each case. Failing to comply with the rule may be fatal to the appeal. See *R. v. Salop*, 2 B. & Ald. 269. Where the appeal has been respited because of an equal division of the court no fresh notice of trial need be given, *R. v. Buckinghamshire*, 6 D. & R. 142; nor if adjourned at the instance of the respondents. *R. v. Lindsey*, 6 M. & S. 379.

Where the appellant is exonerated from serving the notice in consequence of the death of the respondent, see *R. v. Leicestershire*, 15 Q. B. 88; *ante*, p. 45.

Before the court enter and respite an appeal the justices should exercise their discretion in ascertaining whether or not the sessions are the next practicable sessions. *R. v. Derbyshire*, 35 J. P. 633. If by reasonable diligence the appellants could bring on the appeal to be heard the sessions at which the appeal could be so brought on would be the next practicable sessions, and at such session the appeal should either be entered and reported or tried. See *R. v. Peterborough*, 7 Ell. & Bl. 643; 26 L. J. M. C. 153; *R. v. Sevenoaks*, 7 Q. B. 136; *R. v. Devon*, 8 B. & C. 640, n., and as said by Wightman, J. in *R. v. Surrey*, 3 D. & L. 343, the appellants are not bound to enter and respite an appeal against an order of removal at the next sessions after service of the order, unless these sessions are practicable for all purposes. But the parties by lying by cannot make the sessions impracticable, *R. v. Sevenoaks*, 7 Q. B. 136.

Should, however, the "next" sessions be so soon after the time of the order, or the making of a rate to be appealed on as would give no reasonable time for the consideration of the propriety of giving the notice of appeal, or so soon after as to render it impossible satisfactorily to try the appeal at them, then the appeal need not be entered and respited at such sessions. *R. v. Yorkshire N. R.* 3 T. R. 150; *R. v. Surrey*, 2 N. S. C. 155; *R. v. Kent*, 8 B. & C. 639; see also *R. v. Surrey*, 34 L. J. M. C. 69; *R. v. Yorkshire*, W. R. 27 L. J. M. C. 269; *R. v. Surrey*, 50 L. J. M. C. 72; Burns Just. Poor (by Davis) p. 780.

Where, however, an appellant having failed to obtain relief under the Union Assessment Act, 27 & 28 Vict. c. 39, s. 1, which provided for twenty-one days' notice to the The time allowed must not be

unreasonable. assessment committee of the intention to appeal; the Recorder, considering that six days were not sufficient beyond the twenty-one to enable the appellant to determine as to his appealing—such six days being the intervening days before the sessions—allowed the appeal to be entered at the next subsequent sessions, a prohibition was granted against such entry. *R. v. Everton*, 40 L. J. M. C. 105; S. C. *Liverpool Gas Company v. Everton Overseers*, L. R. 6 C. P. 414.

Entry not to be made for the mere purpose of a respite. The entry of an appeal for the mere purpose of respiting it has been considered as useless and creating unnecessary expense; when a reasonable time should be allowed for a parish or party to consider whether to appeal or not; this has held in several cases from *R. v. Surrey*, 1 M. & S. 479, to *R. v. Surrey*, 50 L. J. M. C. 10. And Lord Tenterden, C. J., spoke of such an entry as “a mere nothing.” See *R. v. Monmouthshire*, 1 B. & Ad. 895.

When sessions bound to enter the appeal. When the appellant has complied with the statutable conditions precedent the sessions have no power to refuse the entry of the appeal by reason of a non-compliance with some rule the sessions may have made inconsistent with the statute, and imposing an additional condition on the appellant. *R. v. Parlett*, L. R. 8, Q. B. 491; 42 L. J. M. C. 157. See also, Coleridge, J. *R. v. Yorkshire*, W. R. 2 Q. B. 705.

The sessions may, however, enforce a reasonable and distinct rule; as that the appeal shall be entered on the first day of the sessions, *R. v. Warwickshire*, 6 Q. B. 750; or before 12 o'clock, *R. v. Derbyshire*, 22 L. J. M. C. 31. (Crompton, J. p. 34.)

The entry must be made properly. Give sessions seizin. To give the sessions jurisdiction to entertain the appeal in addition to the necessity of having complied with all the conditions precedent, the appeal must be entered at the proper sessions, to give the sessions a right to deal with it by adjournment or otherwise. See *R. v. Wiltshire*, 14 East 353; (see also Pattison, J.'s remarks on that case in *R. v. Kimbolton*, 6 A. & E. 611.) *R. v. Oxfordshire*, 1 M. & S. 446; *R. v. Lincolnshire*, 3 B. & C. 548; *R. v. Bond*, 6 A. & E. 905; *R. v. Lancashire*, 27 L. J. M. C. 161 (and authorities previously quoted in reference to the giving the notice of appeal as for the first day of the *original* sessions, proceeding with the appeal at an adjourned or divisional court).

Not in erroneous names. Care must be taken that the entry be correctly made in the names of the parties to the appeal, or the sessions may refuse to hear it, and the high court will not rule them to do so by mandamus. *R. v. Leicestershire*, 3 N. S. C. 1; *R. v. Yorkshire W. R.*, 4 B. & Ad. 685; *R. v. Oundle*, 3 Q. B. 359 n.; *R. v. Oxfordshire*, 1 M. & S. 446. But the court would

interfere should the wrong entry have been procured by fraud. *R. v. Yorkshire*, 5 Q. B. 1.

The Q. B. D. might authorise the erasure of a previous entry, but the sessions could not. *R. v. Yorkshire, W. R.*, 5 Q. B. 1.

Where the statute has limited the time for the entry of the appeal such limitation must be observed. *R. v. Wiltshire*, 13 East 353.

It may be necessary sometimes to enter an appeal on an abandoned order where the parties removing do not choose to pay the expenses of maintenance incurred previously to the supersedeas. But if they are willing to pay, it is in the discretion of the sessions to refuse to enter the appeal. See *R. v. Norfolk*, 5 B. & A. 484; *R. v. Yorkshire, W. R.*, 2 Q. B. 705. So the respondent may enter the appeal to obtain his costs; but such a course ought not to be taken if they can be otherwise obtained. *R. v. Townstal*, 3 Q. B. 357; *R. v. Stayley*, *ib.* 360. Where a sum for costs is offered, but for an amount insufficient, the sessions should enter the appeal, and exercise their discretion to ascertain the proper cost to allow. *R. v. Merionethshire*, 6 Q. B. 163. And see 11 & 12 Viet. c. 31, s. 8, as to orders of removal. *R. v. Yorkshire, W. R.*, 31 L. J. M. C. 271. As to costs in a highway appeal under 5 & 6 Will. 4, c. 50. See "Highways."

It is an incidental jurisdiction attached to the Court of Sessions the power of adjournment; *Keen v. R.*, 10 Q. B. 933; *Campbell v. R.*, 11 Q. B. 799; *Rawnsley v. Hutchinson*, L. R. 6 Q. B. 305; 40 L. J. M. C. 97; but it should be exercised with great care, see *R. v. Cambridge Union*, 30 L. J. M. C. 137 (per Lord Denman, C. J., and Patteson, J.)

This general power may, however, be restricted, by the words of the Act under which the appeal is made; as under the Licensing Act, 1829, 9 Geo. 4, c. 61, ss. 29—29 (repealed as to renewals and transfers of licenses), and where it is enacted "the court at such sessions shall hear and determine the matter of such appeal." See *R. v. Bolton*, 11 Q. B. 379. So also where under 26 Geo. 2, c. 74, the table of fees for the justices' clerks made at a sessions were to be approved "at the next succeeding quarter sessions," there was no power to adjourn. *Bowman v. Blyth*, 26 L. J. M. C. 57; 7 E. & B. 26.

The adjourning the hearing is in general in the discretion of the sessions. *R. v. Kimbolton*, 6 A. & E. 603. (See *R. v. Eyre*, *post.*)

Should the court think the parties have been misled by

Entry of appeal within time limited.

When order abandoned, entry for costs.

The respite or adjournment incidental to the jurisdiction.

Power may be restricted by the statute.

In general adjournment in the discretion of the sessions.

grounds of appeal, the appeal should be respited. *R. v. Westmorland*, 10 B. & C. 226.

Or should the court desire to consider what judgment to pass on a person under recognizance to receive sentence, Lord Denman, C. J., remarked, "Surely no better reason could be given for an adjournment:" *Keen's case*, *Keen v. R.*, 10 Q. B. 933. A contrary doctrine laid down in *Dick*, Q. S. 5th ed. 900, was not approved, and was said not to be supported by the authorities quoted.

R. v. Cambridge Union.

In *R. v. The Cambridge Union*, 30 L. J. M. C. 137, the appeal against an order on the settlement of a lunatic pauper had partly proceeded when the sessions (for reasons) adjourned the further hearing to the next sessions. It was held they had that power, and were not estopped by the words of sec. 108, 16 & 17 Vict. c. 97: "And such sessions upon the hearing of the said appeal shall have full power finally to determine the matter." Crompton remarked in the course of the case: "It would have been the duty of the sessions to adjourn upon good reason being shown at the beginning of the hearing." And although their adjourning the case during the hearing did not meet with the approval of the court, yet they still held the sessions acted within jurisdiction. See also *R. v. Kendall*, 1 E. & E. 492; 28 L. J. M. C. 110. In that case, however, the counsel had only just begun to state his case, which was very nearly the same as if the appeal had not begun. See *R. v. Reading*, Cas. temp. Hard. 80.

Sessions to receive an appeal under 17 Geo. 2, c. 38, s. 4, at the sessions next after the publication of the rate.

In *R. v. Wilts*, 8 B. & C. 380; 2 M. & R. 401, a rate was published on the 16th September (1827). The quarter sessions were held on the 16th October. No notice of appeal was given before the Michaelmas sessions, but at that sessions an appeal was entered and respited as "of course" according to the usual practice at the Wilts. sessions. At the Epiphany sessions the justices refused to hear the appeal. Lord Tenterden, C. J., said: "I think the sound construction of the 17 Geo. 2, c. 38, s. 4, is, that the justices are to receive the appeal against a rate at the next sessions after publishing the same, and that they are then to exercise a discretion whether they will hear and determine it at that sessions or respite it to the next. It is impossible to say that the matter must at all events be determined at the first sessions. The statute expressly mentions one case where the justices are to adjourn the appeal, and that is where it shall appear to them that reasonable notice has not been given; but other cases may occur where it may be fit to adjourn the

appeal, even though reasonable notice has been given, as in the case of the unavoidable absence of a witness. The appellant here acted on the faith of the practice of the sessions, and ought not to be deprived of his right of appeal. At the same time I think it would be more beneficial to the public, and more consistent with the intention of the legislature, if the justices did not adjourn appeals against rates as a matter of course. I think they should endeavour to induce the parties to try their appeal at the next practicable sessions after the publication of the rate." The sessions having received the appeal and adjourned it, were bound to hear it. See also *R. v. Monmouthshire*, 1 B. & Ad. 895; *R. v. Suffolk*, 8 Dowl. 628.

Under 9 Geo. 1, c. 7, s. 8, as to appeals against orders of removal, and 17 Geo. 2, c. 38, s. 4, as to appeals against poor rates and overseers' accounts, duly entered, but as to which reasonable notice had *not* previously been given, without impugning the general power of the session to adjourn a case, the sessions have no discretion but to respite the appeal to the next quarter sessions to be there determined. Lord Campbell said in *R. v. Eyre*, 6 Ell. & Bl. 997; 26 L. J. M. C. 14, "It has long been settled that the enactments in statute 9 Geo. 1, c. 7, s. 8, and 17 Geo. 2, c. 38, s. 4, are *obligatory*; and that where no notice at all has been given, the sessions *must* adjourn the appeal. If this had been *res integra*, I should have hesitated before I so construed the statute; for I think it would have been better if a discretion had been intrusted to the sessions: but the contrary is now settled." See *R. v. Staffordshire (R. v. Shropshire)*, 7 East, 549; overruling *R. v. Bucks*, 3 East, 343.

Under s. 6 of 41 Geo. 3, c. 23, upon an appeal against a poor rate on the ground of other persons being improperly rated, notice of appeal is required, not only to be given to the overseers and churchwardens as under sec. 4, "but also to the other person or persons so interested or concerned in the event of such appeal;" and such other person or persons shall, if they desire, be heard upon this appeal.

This statute 41 Geo. 3, c. 23, is to be read as incorporated with 17 Geo. 2, c. 38, s. 4; and as in *R. v. Eyre, supra*, where the appeal was against a poor rate on the ground that others were omitted or underrated (the Rev. Mr. Eyre had objected to the rating of 436 others), but no notice was served on those persons, and it was there held, as above noticed, the sessions were bound to respite the appeal.

In *R. v. Lancashire*, 8 E. & B. 563, 566, Erle, J., remarked

When imperative on the sessions to respite the appeal either as to a poor-law order or a poor-rate.

(See *R. v. Brooke*, 9 E. & C. 915).

that the court had, on several occasions, founded their decisions as to the practice of respiting, on the inveterate construction put upon the Removal and Poor Rate Acts, 9 Geo. 1, c. 7, s. 8, and 17 Geo. 2, c. 38, s. 4, and this remark was referred to in *R. v. Skircoat*, 28 L. J. M. C. 224, where the court endorse Lord Tenterden's observations, previously quoted, saying, "We think the entering and respiting should not be a mere matter of course, but in each case the court should exercise its judgment whether justice requires that the appeal should be adjourned," and Erle, J., remarked, "we would strongly advise the sessions not to enter and respite an appeal where there had been time to try."

When sessions have no option but to respite an appeal.

The compulsory operation of 9 Geo. 1, c. 7, s. 8, in reference to orders of removal, and so also as to poor rate appeals under 17 Geo. 2, c. 38, s. 6, will only apply to the proceedings at the first sessions, and will not interfere with the discretion of the justices at a subsequent session. *R. v. Monmouthshire*, 3 Dowl. P. C. 306.

Not where reasonable notice, although grounds defective.

It will not apply if in the opinion of the sessions a reasonable notice of appeal has been served, but the grounds of appeal are defective: in such case the sessions are not bound to adjourn the appeal, the Act not extending to *grounds* of appeal. *R. v. Kimbolton*, 6 A. & E. 603. The statute provides against the hearing the appeal "unless reasonable notice" be given. But what *is* reasonable notice is for the sessions: and then, if they consider such notice has not been given, they "*shall*" adjourn the appeal to the next sessions, and are bound to do so. See *R. v. Monmouthshire, sup.*; *R. v. Eyre, infra.* In *R. v. Cheshire*, 8 A. & E. 398, the grounds of appeal had been served on the attorney instead of the overseers. It was held the sessions might in such case adjourn the appeal for a proper service of the notice.

In a case decided on 9 Geo. 1, c. 7, s. 8, *R. v. Yorkshire*, W. R., 3 T. R. 150, the sessions had refused to lodge an appeal and respite the hearing to the next sessions, on the ground as appears by the entry made: "Forasmuch as it appears to this court, that there has been sufficient time since the removal of the paupers for the appellants to give notice and come prepared to try this appeal at this sessions, and no cause shown why they did not proceed accordingly, it is ordered that *the motion for lodging the same*, and respiting the hearing to the next quarter sessions be rejected." The court were of opinion the justices had not acted wrong, for the motion was in effect to adjourn the appeal, and it was the intention of the parties not to enter the appeal with-

out the adjournment. But this case was overruled by *R. v. Bucks JJ.*, 3 East, 343, where it was held that upon an appeal lodged against an order of removal, and the sessions were of opinion a reasonable notice had not been given to the respondent parish, they could not dismiss the appeal on the ground that notice might have been given in time, but were *bound*, by the direction of the statute 9 Geo. 1, c. 7, s. 8, to adjourn the appeal. In *R. v. Shropshire* (reported as *R. v. Staffordshire*), 7 East, 549, Lord Ellenborough said: "*R. v. Bucks* had been well considered, and that the court were satisfied that the statute was *compulsory* on the sessions in these cases, to receive and adjourn the appeal."

In the subsequent case of *R. v. Eyre*, 7 Ell. & B. 609; 26 L. J. M. C. 121, the Rev. Mr. Eyre had then given his notice of appeal against his rating to the overseers of the parish, and two others by name, and "to all others whom it may or doth concern," he set out his grounds of appeal, and then gave notice that he should not prosecute and try the appeal at the next sessions, but only lodge and enter the same, and petition for a respite to the next following sessions; and then the notice required the production of certain documents at the trial. The respiting of the appeal was opposed, and the sessions held that there was "*a reasonable*" notice of appeal, and refused the adjournment. In this the court held they were right, and that such refusal was within the exercise of their discretion. See *R. v. Monmouthshire*, 3 Dowl. P. C. 306.

The question is for the sessions, whether there is or is not a reasonable notice; *R. v. Buckinghamshire*, 3 East, 342; *R. v. Strafford*, 7 East, 549, overruling *R. v. Yorkshire N. R.* 3 T. R. 150.

This section does not say the appeal shall not be *received*, if no statement of the grounds of appeal have been given; it says the appeal shall not be heard. It was, therefore, held, in *R. v. Kimbolton*, 4 A. & E. 603, that the court might, and it would seem *ought*, to have adjourned the appeal to allow the appellants the opportunity to serve grounds of appeal in time for the next sessions.

In *R. v. Macclesfield*, 13 Q. B. 885; 19 L. J. M. C. 38, the grounds of appeal had not been served in time. The sessions confirmed the order, and made a special entry:—"Order confirmed, not on the merits." But the right of appeal was not thereby lost on the actual removal; it was an attempt to appeal, which became abortive by reason of the grounds of appeal not

Appeal to be received though not heard.

Order "confirmed, not on merits."

having been served in time. The appellant had the right to be heard. See *R. v. Yorkshire W. R.* 3 T. R. 776.

In appeal against an order of removal, grounds of appeal to be stated; no hearing without.

The 4 & 5 Will. 4, c. 76, s. 81, enacts that "in every case where notice of appeal against such order shall be given, the overseers or guardians of the parish appealing against such order, or any three or more of such guardians, shall with such notice, or fourteen days at least before the first day of the sessions at which such appeal is intended to be tried, send or deliver to the overseers of the respondent parish a statement in writing under their hands and the grounds of such appeal; and it shall not be lawful for the overseers of such appellant parish to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid (a). On the adjournment the fresh grounds must not change the character of the appeal, as was done in *R. v. Eyre*, 26 L. J. M. C. 121.

Respite on account of pressure of business.

So also where after the entry of the appeal the appeal is respite on account of the pressure of business it would appear that fresh grounds of appeal may be given if they do not change the character of the appeal: *R. v. Derbyshire J.J.*, 6 A. & E. 612 (n. to *R. v. Kimbolton*); *S. P. R. v. Kendal*, 28 L. J. M. C. 110; not, however, where there has been a hearing and the adjournment happens because the court is evenly divided in opinion: *R. v. Arlecdon*, 11 A. & E. 87.

Right to begin the hearing.

Upon the hearing the appeal the counsel for the respondent will begin where the appellants dispute any part of his case. He may first call on the appellant to prove his notices, and all conditions precedent necessary to give him a *locus standi* to appeal and be heard. Should, however, the appellant admit the respondent's case, but set up some new affirmative answer—as a subsequent settlement—he will begin, and support such new case.

Where grounds traversing conditions precedent.

In most instances the appellant will have traversed by his grounds of appeal every step necessary as a condition precedent for the respondent to have performed to give him a *locus standi* to maintain his case. As in an appeal against the stopping up a highway; inasmuch as, since *R. v. Harvey*, 44 L. J. M. C. 1; 10 L. R. Q. B. 46; 31 L. T. 505, overruling to that extent *R. v. Worcestershire*, 3 E. & B. 548; 23 L. J. M. C. 113, the certificate does not now set out any of

(a) The clause then provides that no evidence shall be given except on points set forth in the

ground of removal, or of appeal against the order of removal.

the preliminary matters anterior to the surveyor's request to the justices to make their view, the grounds of appeal should put the respondent to proof of each step required to be done under sec. 84 of the Highway Act, 1835. And he would also be put upon proof by specific objections of each step disclosed on the certificate. And having proved them, he would then have to support his case on the merits.

Where the appellant is required to enter into his recognizance to prosecute an appeal and pay costs it becomes a condition precedent to the hearing of the appeal: *R. v. Oxfordshire JJ.*, 1 M. & S. 446; *R. v. Lincolnshire JJ.*, 3 B. & C. 548. It may be verbally acknowledged within the time fixed by the statute for entering into it, and completed afterwards: *R. v. St. Alban's JJ.*, 8 A. & E. 932; *Chapman v. Robinson*, 28 L. J. M. C. 30; *Stanhope v. Thorsby*, 35 L. J. M. C. 182 (a). The recognizance will be entered on the sessions roll; *Hall v. Wingfield*, Hob. 195; and the Clerk of the Peace should have it in court to be produced and proved at the hearing.

Under Baines' Act (12 & 13 Vict. c. 45, s. 8), after reciting that appellants are liable to be prevented from trying their appeals upon their merits in consequence of imperfections in taking recognizances, it is enacted, "that when any recognizance or recognizances, which shall have been entered into within the time by law required before any justice or justices for the purpose of complying with any such condition of appeal, shall appear to the court before which such appeal is brought to have been insufficiently entered into, or to be otherwise defective or invalid, it shall be lawful for such court, if it shall so think fit, to permit the substitution of a new and sufficient recognizance, or new and sufficient recognizances, to be entered into before such court in the place of such insufficient, defective or invalid recognizance or recognizances, and for that purpose to allow such time, and make such examination, and impose such terms as to payment of costs to the respondent or respondents as to such court shall appear just and reasonable, and such substituted recognizance or recognizances shall be as valid and effectual to all intents and purposes as if the same had been duly entered into at any earlier time or times, as required by any statute or statutes for that purpose."

Although the case may have been heard before the justices

Additional evidence

(a) In some instances money is deposited in lieu of the recognizance.

allowed,
except in
excise
cases.

below on evidence, there is no objection to the parties supporting their cases by additional evidence, excepting in appeals under the Excise Acts. See *R. v. The Commissioners of Excise*, 3 M. & S. 133. See *infra* tit. "Excise," "Evidence."

Evidence
confined to
the grounds
stated.

But the appellant will be limited to the points raised by the grounds of his appeal: *R. v. Watford*, 9 Q. B. 626. This is so provided by most acts giving the right of appeal. And see Baines' Act, *ante*; and the powers of amending grounds of removal and grounds of appeal: *R. v. Llangenney*, 32 L. J. M. C. 265. Some latitude is permitted in the receipt of evidence if the grounds stated enable the party to make sufficient inquiry into the merits. See note (a), p. 151.

Objection
on a con-
viction to
be taken
in limine.

It will be the duty of the clerk to the convicting justices to return the original conviction for enrolment at the sessions, *Ex parte Hayward*, 3 B. & S. 546, and the respondent should ascertain that he has done so, or a *subpoena duces tecum* should be served on the clerk to the justices by whom it was made. The appellant's counsel should compare the form of the conviction returned with that furnished to him to ascertain if there be any variance, on which he may apply for an adjournment: *R. v. Allen*, 15 East, 346. This objection should be taken *in limine*, as after the hearing has partly proceeded the adjournment would not be allowed except under special circumstances: see *R. v. The Cambridge Union*, 1 B. & S. 61; *R. v. Skircoat*, 28 L. J. M. C. 224.

Adjourn-
ment.

The court has in most cases a power of adjournment. But there is no such power under an appeal against the refusal to transfer or renew an alehouse licence. (*Ante*, p. 69.)

Amend-
ment of
grounds of
removal
or appeal.

So many poor-law appeals had been determined on purely technical points, without arriving at a decision on the merits of the case, that the legislature passed the 11 & 12 Vict. c. 31, which by sec. 4 recites, that the grounds of removal or of appeal are required to be communicated, for the purpose of enabling the party receiving them to enquire into the subject of such statement, and if need be to prepare for trial, and enacts "that upon the hearing of any appeal against an *order of removal* no objection whatever on account of any defect in the form of setting forth any ground of removal or of appeal in any such statement shall be allowed, and no objection to the reception of legal evidence offered in support of a *ground of removal* or appeal alleged to be set forth in any such statement shall prevail, unless the court shall be of

opinion that such alleged ground is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to enquire into the subject of such statement and to prepare for trial: provided always, that in all cases where the court shall be of opinion that any such objection to such statement or to the reception of evidence ought to prevail, it shall be lawful for such court, if it shall so think fit, to cause any such statement of grounds of removal or appeal to be *forthwith amended* by some officer of the court or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions, or to the next subsequent sessions, or both payment of costs and postponement, as to such court shall appear just and reasonable" (a).

A similar clause was passed in Baines' Act, 12 & 13 Vict. c. 45, s. 3, applying to "grounds of appeal." And 16 & 17 Vict. c. 97, s. 112, is a similar clause in reference to orders on the settlement of lunatics.

In *R. v. Ruyton of the Eleven Towns*, 30 L. J. M. C. 229, Hill, J., observed, on 11 & 12 Vict. c. 31, s. 4, that the most ample powers were given to the sessions to allow an amendment to the grounds of removal (and the same remarks would equally apply to the amendment of grounds of appeal under 12 & 13 Vict. c. 45, Baines' Act, and 16 & 17 Vict. c. 97, s. 112) for the purpose not only of fully meeting the justice of

(a) The recital in Baines' Act (12 & 13 Vict. c. 45) is to the effect that a statement of the grounds of appeal, when required by that or any other Act, is for the purpose of enabling the party receiving it to enquire into the subject of such statement, and to prepare for trial; and enacts, "that upon the hearing of any appeal to any court of general or quarter sessions of the peace, no objection on account of any defect in the form of setting forth any ground of appeal shall be allowed; and no objection to the reception of legal evidence offered in support of any ground of appeal shall prevail, unless the court shall be of opinion that such ground of appeal is so imperfectly or incorrectly set forth as to be insufficient to enable the

party receiving the same to enquire into the subject of such statement, and to prepare for trial: provided always, that in all cases where the court shall be of opinion that any objection to any ground of appeal, or to the reception of evidence in support thereof, ought to prevail, it shall be lawful for such court, if it shall think fit, to cause any such ground of appeal to be *forthwith amended* by some officer of the court or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions, or to the next subsequent sessions, or both payment of costs and postponement as to such court shall appear just and reasonable."

Amendment of grounds of appeal.

the case, but for securing a trial on the merits. Crompton, J., said he was disposed to take a very wide view of the statute, and to hold it applicable in every case where an objection is made that "the grounds" are not sufficient to let in the case of the party; and said he would be sorry to put a narrow construction on so useful an enactment.

New
grounds of
removal.

In a subsequent case, *R. v. Llangenney*, 32 L. J. M. C. 265, the court held that the grounds of removal might be amended even to the setting up an entirely new ground of removal. Cockburn, C. J., remarked in *R. v. Ruyton*, 30 L. J. M. C. 229, that had an objection been made to the sufficiency of the grounds of *appeal*, the recorder would no doubt have amended under 11 & 12 Vict. c. 45, s. 3; and the Chief Justice in that case expressed his opinion to be that the section only applied to a defective statement of grounds intended to be raised, and not to statements of fresh grounds. However, from those decisions it is clear that the sessions may so amend by adding a new ground to either the grounds of removal or appeal; and when so amended the decision will be final, and not subject to review, in accordance with the following sec. 9 of 12 & 13 Vict. c. 45, enacting that—"the decisions of the court of general or quarter sessions of the peace upon the hearing of any appeal as to the sufficiency of the statement of any ground or grounds of appeal, and as to the amending or refusing to amend any order or judgment of a justice or justices appealed against, or the statement of any ground or grounds of appeal, and as to the substitution of any new recognizance or recognizances as aforesaid (sec. 8), shall be final, and shall not be liable to be reviewed in any court by means of a writ of *certiorari* or *mandamus*, or otherwise." See *R. v. Kesteven*, 3 Q. B. 810.

Frivolous
and vexa-
tious ap-
peals.

COSTS.

But as regards grounds of appeal which may be considered frivolous and vexatious, by Baines' Act, 12 & 13 Vict. c. 45, s. 4, it is enacted that, "if in any notice of appeal the appellant or appellants shall have included any ground or grounds of appeal which shall, in the opinion of the court determining the appeal, be frivolous or vexatious, such appellant or appellants shall be liable, if the court shall so think fit, to pay the whole or any part of the costs incurred by the respondent or respondents in disputing any such ground or grounds of appeal, such costs to be recoverable in the manner hereinafter directed (sec. 5) as to the other costs incurred by reason of such appeal." Similar provisions are contained in 4 & 5 Will. 4, c. 76, s. 83, and 11 & 12 Vict.

c. 31, s. 5, with regard to appeals under the poor laws. Under a general traverse the sessions will judge whether anything has been done frivolously or vexatiously. See *R. v. St. Pancras*, 12 Q. B. 31.

Under certain statutes the question of the sessions award- *Costs of*
ing the costs to the successful party is withdrawn from their appeal.
discretion, and they are bound to award them. This is the case under the Highway Act, 1835, 5 & 6 Will. 4, c. 50, s. 90, which "authorises and *requires*" the sessions to award "to the party giving or receiving notice of appeal such costs as he shall have incurred in prosecuting or resisting the appeal, whether the same shall be tried or not." In *R. v. Yorkshire W. R.*, 38 L. J. M. C. 271, this section was held to be imperative, and a *mandamus* to the sessions was granted where they had refused the costs. See also the Act for the Prevention of Cruelty to Animals (*infra*); but an appeal against a conviction under that Act may be governed by the conditions of the Summary Jurisdiction Act, 1879, should the appellant *elect* to proceed by appeal under that Act, as authorised by section 32.

As to costs on a frivolous appeal, see *R. v. Over*, 14 Q. B. 425; 19 L. J. M. C. 57; see also *R. v. Stoke Bliss*, 6 Q. B. 158; 13 L. J. M. C. 151; and *infra*, tit. "Costs."

Rules of sessions cannot be made so as to restrict the power of the sessions to award full costs; as where by a rule the court could not award more than 40s. The court should exercise an independent discretion in each case; *R. v. Glamorganshire*, 19 L. J. M. C. 172; *R. v. Nottingham*, 1 N. S. C. 422; *R. v. Merionethshire*, 6 Q. B. 163.

The respondent is entitled to costs if the appellant gives notice of countermand, although there is a rule to the contrary. *R. v. Montgomery*, 19 L. J. 397.

If no order be made as to costs on giving judgment, a subsequent sessions has no power to grant them; it would be altering the judgment of a previous sessions. *R. v. Staffordshire*, 26 L. J. M. C. 179; see *infra*, p. 154.

The sessions have no common law power to grant costs on an appeal.

See further as to costs, *supra* tit. "Costs."

The sessions must either quash or confirm the order Judgment.
appealed against; or affirm it as to some and quash it as to others: *R. v. Bond*, 2 Show. 503; S. C. 2 Bott. 922; 2 Salk. 472, 475. The sessions cannot make an original order, S. C. They may alter their own judgment during the continuance of the same sessions, even after adjournment;

but a subsequent sessions cannot in any way deal with the judgment.

Award.

When an appeal against a poor-rate has been referred to arbitration, but the order of reference is silent as to costs, neither the arbitrator or any subsequent court has any power to award costs. Should the arbitrator award the costs, he may be called upon by the High Court to amend his award; and the sessions will only have the ministerial duty of entering the award as amended as the judgment of the court. The 12 & 13 Vict. c. 45, s. 13, gave the sessions no further authority. *R. v. Middlesex JJ.*, L. R. 6 Q. B. 220; 40 L. J. M. C. 109; 24 L. T. 131; 19 W. R. 744; *West London Extension Ry. Co. v. The Fulham Union (Assessment Committee)*, L. R. 5 Q. B. 361; 39 L. J. M. C. 149; 22 L. T. 523.

Chairman
no casting
vote.

The chairman of the sessions has no casting vote; *inter pares non est potestas*: *R. v. Fladbury*, 10 A. & E. 706; 2 Nolan's Poor Law, 4 Ed. 546. And if evenly divided the case must be adjourned until a sessions be found with a majority deciding the appeal, see *R. v. Belton*, 11 Q. B. 379, 2 Nolan, *supra*. Or otherwise the judgment of the sessions would be the judgment of the court appealed from: *ib.* per Lord Denman, C. J. It will be the duty of the clerk of the peace to enter the adjournment: *Keen v. R.* 10 Q. B. 935. If no adjournment be entered the Court of Queen's Bench Division would grant a mandamus to enter continuances if it appeared that no record of a judgment had been made. 2 Nolan, 546; *R. v. Leicestershire*, 1 M. & S. 442; *R. v. Westmoreland*, 2 Bott. (6th ed.) pl. 983.

Should a judgment have been entered, although on a wrong casting up of the votes, the court will not interfere. The mistake should have been rectified whilst the Court was sitting. *R. v. Leicestershire*, 1 M. & S. 442; *R. v. Monmouthshire*, 4 B. & C. 844; *R. v. Fladbury*, 10 A. E. 706; and see *R. v. Middlesex, In re Slade*, 2 Q. B. D. 516; 46 L. J. M. C. 225; 36 L. T. 402; 25 W. R. 610.

Judgment
of the
court may
be altered
during the
session;
not other-
wise.

During the holding the same sessions the Court may alter a judgment which they had given: *St. Andrew's, Holborn*, v. *St. Clements Danes*, 2 Salk. 494, 606; *R. v. Leicestershire*, 1 M. & S. 442; *R. v. Yorkshire W. R.* 2 Q. B. 705. No subsequent sessions can alter the judgment: *R. v. Hedingham Sible*, Burr. S. C. 112; *Cockfield v. Boxstead*, 2 Salk. 477; *R. v. Staffordshire*, 26 L. J. M. C. 179.

Decision on
facts final.

On all matters of fact the decision of the sessions is final: no bill of exception lies: *R. v. Preston-upon-the-Hill*, Burr. S. C. 77. And so also, where they act within their juris-

diction, and exercise their discretion on the matter of the appeal, however wrong their determination may be : *R. v. Middlesex* (Slade's Case), 2 Q. B. D. 516 ; 46 L. J. M. C. 225 ; 36 L. T. 402 ; *R. v. Kent JJ.*, 41 J. P. 263. Unless a case be stated by the sessions for the opinion of the High Court, and then the sessions must have heard the evidence and found the facts on which the case is stated, and on which the points of law are submitted to the High Court, otherwise the court will not take cognizance of it. *R. v. Sutton Coldfield*, L. J. 9 Q. B. 153 ; 42 L. J. M. C. 57, *e. nom. R. v. London and North Western Ry.*

Where the sessions have acted without their jurisdiction, and have been guilty of malversation by some of the justices forming the court being personally interested in the decision, the court will interfere by mandamus ; and at the time the case was decided even although the certiorari was taken away : *R. v. Cheltenham Commissioners*, 1 Q. B. 467 ; *R. v. Sheffield Ry. Co.* 11 A. & E. 194.

APPRENTICE.

Adam Smith, in his "Wealth of Nations" (b. 1. c. 10) says, Derivation and history of the term. there is no word Greek or Latin which expresses the idea we now annex to the word apprentice, a servant, bound to work at a particular trade for the benefit of a master, during a term of years, upon condition that the master shall teach him that trade : the word does not occur in its application to mechanic arts before the reign of Henry 4.

In early times the 'prentice, and, in particular, the "London 'prentice," formed an important portion of the community ; and we find statutes in the reign of Henry 8 in their interest, and still remaining on the statute book. 22 Hen. 8, c. 4, recites that divers wardens and fellowships had made ordinances "after their own sinister minds and pleasure, and that every apprentice should pay on his first entry into their Common Hall," some 40s., some 30s., &c., "to the great hurt of the king's true subjects putting their child to be apprenticed ;" and it was ordered that on the entry into their fellowship the apprentice should pay no more than 2s. 6d., and when his term expired not above 3s. 4d., upon pain of forfeiture of £40.

Again in 28 Hen. 8, c. 5, reciting 22 Hen. 8, c. 4, and that, "Sithen which said acts divers masters, &c., by cautill and subtil means compassed and practised to defraud and

delude the said good and wholesome statutes, causing divers prentices or young men immediately after their years be expired, or that they be made free of their occupation or fellowship, to be sworn on the Holy Evangelists that they will not open shop, &c., as freeman without the licence and assent of the master, wardens, &c., upon pain of forfeiting their freedom, to the great hurt and impoverishment of the apprentices and others their friends;" and it ordains that no apprentice shall be so restrained under a penalty of £40. 5 Eliz. c. 4, s. 35, contained various regulations respecting apprentices; but most of the enactments of the statute of Eliz. were repealed by 54 Geo. 3, c. 96; and the whole finally repealed by 38 & 39 Vict. c. 86, s. 17.

Of the statute of Eliz. Lord Coke observes, "that it was enacted, not only that workmen should be skilful, but that youth should not be nourished in idleness, but brought up and educated in lawful sciences and trades." *Co. Inst.* 55.

The ruling of Lord Holt, C. J., in *R. v. Johnson*, 1 Salk. that the practice which had then grown up could not be unsettled, that the 5 Eliz. c. 4, conferred an original jurisdiction on the quarter sessions in reference to apprentices, and which ruling was followed in subsequent cases in *Strange's Rep. Mod. Rep. Cas. temp. Hard.*; 1 Wm. Saunds. have in modern practice become obsolete; and no such cases are now heard before the quarter sessions, excepting those on appeal from a decision of justices in petty sessions. The original jurisdiction of the justices over the apprentice now is in the district in which the master lives. *R. v. Collingbourne*, 2 L. Raym. 1410.

General
jurisdic-
tion of
justices.

The justices under 54 Geo. 3, c. 46, s. 3, have a general jurisdiction to hear and determine complaints respecting apprentices. So far as the apprenticeship applies to the business of a workman (sec. 12, 38 & 39 Vict. c. 90), that is, a "servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour" (sec. 10, *ib.*), any dispute between the master and apprentice under that act, may be heard and determined by a court of summary jurisdiction (sec. 5, *ib.*), and which is deemed a court of *civil* jurisdiction having all the powers conferred on a County Court. (Sec. 4, *ib.*) But those powers are in addition to, and not in derogation of, any powers conferred on the justices by the Summary Jurisdiction Act; but no warrant can issue under this act excepting against an apprentice failing to appear on a complaint under the act. (sec. 9, *ib.*) The Act is of a "civil" character relating to wages and

damages for breach of contract; and by sec. 3, sub-sec. 1, the justices may rescind any contract within the act including an apprenticeship.

The compulsory binding of parish apprentices under 43 Eliz. c. 2, s. 5, and 8 & 9 Will. 3, c. 30, was repealed by 7 & 8 Vict. c. 101, s. 13.

It may be mentioned that the 5 Eliz. c. 4 and so also 54 Geo. 3, c. 96, contained various regulations respecting apprentices, but these statutes were wholly repealed by 38 & 39 Vict. c. 86, s. 17.

After the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76, sec. 15), the apprenticing of children of poor persons was made subject to the rules and orders of the Local Government Board which should be made from time to time (see Glen's Consolidated Poor Law Orders); and by sec. 61, the justices are to ascertain whether such rules, then in force, had been complied with, and they are to certify the same at the foot of the indenture and counterpart, and without such certificate the contract of apprenticeship would not be valid.

But those orders are only applicable in the exceptional cases (since 1st October 1844) where the allowance of the justices is required to the apprenticeship; they do not apply to apprenticeships made under the Board of Guardians of a Union under 7 & 8 Vict. c. 101, s. 12, and under which, where a parish is within a union or subject to a Board of Guardians, the guardians and not the overseers have conferred on them the full power to bind a poor child as an apprentice; and in such case the indentures of apprenticeship will be executed by the guardians, and need not be allowed by any justice. And the guardians have under this section all the powers for binding or assigning any such apprentice possessed by the overseers. The guardians are to keep a register of all such apprentices, according to 42 Geo. 3, c. 46 (7 & 8 Vict. c. 101, s. 12) (a).

The Stamp Act, 33 & 34 Vict. c. 97, defines in the schedule of stamps that every writing relating to the service or tuition of an apprentice, clerk, or servant placed with any master, to learn any profession, trade, or employment (except articles of clerkship to attorneys or others specially charged with duty), is to be deemed an instrument of apprenticeship.

Poor law orders.

Definition under the Stamp Act.

(a) As to these regulations being merely directory and these omissions not affecting the inden-

tures or a settlement under them, see *R. v. St. Mary, Bermondsey*. 2 E. & B. 809; 23 L. J. M. C. 1.

Poor children exempt from duty.

But instruments relating to any poor child apprenticed by, or at the sole charge of, any parish or township, or by or at the sole charge of any public charity, or pursuant to any Act for the regulation of parish apprentices, are exempt from any duty.

Under the statute the duty is :—

	<i>s.</i>	<i>d.</i>
Where there is no premium or consideration . . .	2	6
In any other case :—		
For every £5, and also for any fractional part of £5 of the amount of premium or consideration	5	0

And there is a penalty of £20 on not stating the full amount of the consideration.

Recital in indenture no proof of poverty.

The recital in the indenture that the premium is paid out of a charitable fund is not proof that it is so paid ; nor can the declaration of the parish officers be admitted as proof of out of what funds it was paid, more especially when they might be called as witnesses. *R. v. Skiffington*, 3 B. & A. 382.

Payments liable to duty.

The sum *paid*, and not that agreed to be paid, is the criterion for the premium ; as where £19 19s. is *paid* for £20 agreed to be paid. *King v. Low*, 3 C. & P. 620.

The covenant on the part of the parent to provide the poor apprentice with maintenance and clothing is not such a benefit as renders the indenture liable to a stamp duty. *R. v. St. Petrox in Dartmouth*, 4 T. R. 196 ; *R. v. Aylesbury*, 3 B. & Ad. 569. But where, in addition to the premium from the charitable society, the father gave four I.O.U.'s for £5 each payable after the interval of a year without setting them out in the deed, the deed was held to be void. *Westlake v. Adams*, 5 C. B. N. S. 248 ; 27 L. J. C. B. 271. See also *R. v. Amersham*, 4 A. & E. 508 ; *R. v. Baildon*, 3 B. & Ad. 427 ; *Hawkes v. Clutterbuck*, 2 C. & K. 811.

Enrolment of indentures.

In some towns the custom is to enrol the deed of apprenticeship. See Com. Dig. "London," N. 2. *Barber v. Dennis*, 6 Moore, 69 ; *R. v. Marshall*, 2 T. R. 2 ; *R. v. Cambridge (Mayor)*, 2 Chitty, 144.

Construction of indenture.

Where the parties appear from the whole instrument to have contemplated above all other things a contract of master and apprentice, it will be deemed to be one of apprenticeship : *R. v. St. Margaret's*, 6 B. & C. 97 ; *R. v. Combe*, 8 ib. 82 ; *R. v. Tipton*, 9 ib. 888 ; *R. v. Edingdale*, 10 ib. 739 ; *R. v. Nether Knutsford*, 1 B. & Adol. 726 ; *R. v. Crediton*, 2

ib. 493; *R. v. Newton*, 3 Nev. & M. 306; 1 Ad. & E. 238. But otherwise it will be but an imperfect contract of apprenticeship so as to confer a settlement: *R. v. Tipton (supra)*, *R. v. Billingham*, 5 Ad. & E. 676. The mere fact of the contract speaking of the servant being "taught" or "instructed" in his work, will not constitute it a contract of apprenticeship, if in other respects it is essentially a contract of hiring: *R. v. Northowram*, 2 New Sess. Cas. 437; 10 Jur. 1003.

The contract must not be one prohibited by statute; as where a child under sixteen years of age is bound apprentice to a chimney-sweep. Such a contract is void, and not merely voidable. See *R. v. Hipswell*, 8 B. & C. 466; *R. v. Gravesend*, 3 B. & Adol. 240. See 3 & 4 Vict. c. 85, s. 2; 27 & 28 Vict. c. 37; 38 & 39 Vict. c. 70, as to chimney sweepers. See *post*, p. 187.

Contract not to be prohibited by statute.

No boy under the age of ten, or any girl, can be bound to work in collieries underground: 35 & 36 Vict. c. 76, s. 5; nor boy under twelve or girl of any age, in metalliferous mines underground: 35 & 36 Vict. c. 77, s. 4; and no child under nine years of age can be bound apprentice by the parish officers, nor the guardians of the union: 56 Geo. 3, c. 139, s. 7.

The settlement in a parish by apprenticeship is founded on 3 & 4 Will. & Mary, c. 11, s. 8, enacting that "if any person shall be bound an apprentice, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement."

Parish apprentice.

The inhabiting under the indenture must be for forty days in a parish: *R. v. Flockton*, 2 Q. B. 535; and is where the apprentice sleeps the last of the forty days in one parish: see *St. John v. St. James*, 1 Str. 594; *R. v. Brichthelmston*, 5 T. R. 188; and this although he does no service during the time: *R. v. Charles*, Burr. S. C. 707; *R. v. Burton-upon-Irwell*, 32 L. J. M. C. 102. But the lodging must be for the purpose of the apprenticeship: *R. v. Gwinnear*, 1 A. & E. 152; *R. v. Yorkshire, W. R. JJ.*, 2 Dowl. N. S. 707; and not only on account of illness: *R. v. Bramby-in-the-Marsh*, 7 East, 381; and see *R. v. Stratford-upon-Avon*, 11 East, 176. The forty days need not be consecutive: *R. v. Gainsborough*, Burr. S. C. 586; or within one year: *R. v. Aldstone*, 2 B. & Ad. 207.

Residence with the master in furtherance of the indenture (*R. v. Burslem*, 11 A. & E. 52; *R. v. Foulness*, 6 M. & Sel. 351) can raise no question. But if the apprentice is allowed

to sleep in another parish as a matter of indulgence, no settlement is thereby gained: *R. v. Ilkeston*, 4 B. & C. 64. Where, however, the master and apprentice were both in the local militia at B. during the last forty days, the apprentice gained his settlement at B.: *R. v. Chelmsford*, 3 B. & Ald. 411. But where the apprentice is absent, the apprenticeship must be actively or constructively going on: *R. v. Brotton*, 4 B. & Ald. 84; *R. v. Banbury*, 3 B. & Ad. 706; *R. v. Somerby*, 9 A. & E. 310; *R. v. Liukinhorne*, 3 B. & Ad. 413.

The apprentice sleeping the last night of his apprenticeship in the place which may be considered as his ordinary lodging, the settlement will be there gained: *R. v. Barton under Irwell*, 32 L. J. M. C. 102; *S. C. Barton v. Hulme*, 3 B. & S. 662; 7 L. T. (N. S.) 853. See also *R. v. Elswick*, 30 L. J. M. C. 66; 24 J. P. 787; 3 L. T. (N. S.) 321.

Service
with
another
master.

Service of the apprentice with another with the master's assent, he receiving his earnings: *R. v. St. George's, Hanover Square*, Burr. S. C. 12; or, if with the master's consent, but without receiving the earnings: *R. v. Barlestone*, 5 B. & Ald. 780. But the service must be connected with the indentures: *R. v. Ecclesfield*, 6 M. & S. 174. Where there is no such consent, see *R. v. St. Martin's, Exeter*, 2 A. & E. 655; *R. v. Holy Trinity*, 3 T. R. 605; *R. v. Ideford*, Burr. S. C. 821; subsequent assent will not be sufficient: *R. v. Whitchurch*, 1 B. & C. 574.

Where
master
dead,

Service under the personal representatives of the deceased master will be an effectual service under the indentures. *R. v. Stockland*, Cald. 60; 1 Doug. 70. See *R. v. Chirk*, Burr. S. C. 782. As to parish apprentices, see 32 Geo. 3, c. 57, ss. 2, 4; *R. v. Sheepshead*, 15 East, 59; *R. v. Eakring*, Burr. S. C. 321. In the case of the master's bankruptcy the apprentice may be discharged from his indentures by notice in writing to the trustee to that effect, 32 & 33 Vict. c. 71, s. 32. As to the former case, see *R. v. Buckingham*, 2 Ld. Raym. 1352; *R. v. Langham*, Cald. 126.

or bank-
rupt.

Where
premium
under £5,
or no pre-
mium and
death of
the master.

Where no premium, or a premium of less than £5, has been paid, the covenant for the maintenance of a parish apprentice is not in force for more than three months after the death of the master. 32 Geo. 3, c. 57, s. 1; 5 Vict. c. 7. The justices, by indorsement on the indentures, may order the apprentice to serve the remainder of his term to either the widow, husband, son, daughter, brother, sister, executor or administrator of the deceased master making application for such purpose. 32 Geo. 3, c. 57, s. 2. See *Cooper v. Simmons*, 31 L. J. M. C. 138. As to the custom in London,

see *R. v. Peck*, 1 Salk. 66, 204; Pulling's Laws of London, 482, as to the death of the master dissolving the contract in an ordinary apprenticeship.

The apprentice may obtain his discharge on complaint to two justices of "misusage, refusal of necessary provisions, cruelty, or other ill-treatment." 20 Geo. 2, c. 19, s. 3; 4 Geo. 4, c. 29, s. 1. And as to a parish apprentice removing out of the country, or forty miles from the parish in which he resides, see 56 Geo. 3, c. 139, s. 8. Discharge.

Any person aggrieved by a determination of the justices under 20 Geo. 2, c. 19, may appeal to the next general quarter sessions held for the jurisdiction in which the order complained of may be made, except it be an order of commitment, and which sessions will hear and determine the same, with power to award costs not exceeding forty shillings (sec. 5); see now Baines' Act, *infra*, "Appeal." By sec. 6, *certiorari* is taken away; but see the Sum. Juris. Act, 1879, s. 40, and tit. "*Certiorari*" *infra*. Appeal.

ARBITRATION.

By 12 & 13 Vict. c. 45, s. 12, reciting 9 & 10 Will. 3, c. 15, and that it was expedient to facilitate and render more effectual references to arbitration disputes for which the remedy is by appeal to a court of general or quarter sessions of the peace, it is enacted "that at any time after notice given of appeal to any court of general or quarter sessions of the peace against any order, rate or other matter (except a summary conviction or an order in bastardy, or any proceeding under or by virtue of any of the statutes relating to Her Majesty's revenue of excise or customs, stamps, taxes, or post-office), for which the remedy is by such appeal, it shall be lawful for the parties by themselves or their attornies, and by order of a judge of Her Majesty's Court of Queen's Bench, to submit the matter or matters of such appeal to the award or umpirage of any person or persons, and to agree that such submission should be made a rule of the said Court of Queen's Bench, and to insert such agreement in their submission or the condition of the bond or promise, whereby they oblige themselves respectively to submit to the award or umpirage of such person or per- Judge may refer appeal to arbitration.

Exceptions.

sons, and thereupon such and the like proceedings in all respects shall and may be taken with regard to submissions under this Act, and to enforcing awards or umpirages thereupon, and to setting aside the same, as are authorized by the said Act of King William the Third with regard to the cases therein provided for; and every award or umpirage duly made under this Act shall be as binding and effectual to all intents as if the same had been a regular judgment of the said court of general or quarter sessions, and shall and may on the application of either party be enrolled among the records of the said court of sessions."

Sec. 13 enacts, "That it shall be lawful for any court of general or quarter sessions of the peace, before which any appeal (except against a summary conviction or an order in bastardy, or any proceeding under or by virtue of any of the statutes relating to Her Majesty's revenue of excise or customs, stamps, taxes, or post-office) shall be brought to order, with consent of the parties or their attorneys, that the matter or matters of such appeal be referred to arbitration to such person or persons, and in such manner and on such terms as the said court shall think reasonable and proper; and such order may be made a rule of the Court of Queen's Bench on the application of either party; and the award of the arbitrator or arbitrators, or umpirage of the umpire, may, on motion by either party at the sessions next or next but one after such award or umpirage shall have been finally made and published, or after the decision of the Court of Queen's Bench on any motion for setting aside the same, be entered as the judgment of the court of general or quarter sessions in the appeal, and shall be as binding and effectual to all intents as if given by the said court: provided always, that the Court of Queen's Bench may, if it think fit, on application within the term next after the making and publication of such award or umpirage, either refer the case back again to the same arbitrator, arbitrators or umpire, or wholly set aside the award or umpirage already made, and may in the latter event order the court of general or quarter sessions to enter continuances and hear the appeal."

Sec. 14, "If upon any reference to arbitration under this Act it shall be made to appear to the Court of Queen's Bench that, either from the death of the arbitrator or arbitrators or umpire, or from any other cause, it has become impossible that an award or umpirage can be made, it shall be lawful for the said court to order the court of general

or quarter sessions of the peace to enter continuances, and hear the appeal."

By 12 & 13 Vict. c. 45, s. 15, the several provisions relating to arbitration contained in 3 & 4 Will. 4, c. 42, are "to be deemed and taken to be applicable to arbitrations under this Act; and in every such arbitration the arbitrator or arbitrators or umpire shall have the same powers of amendment which the court of general or quarter sessions of the peace would have had on the trial of the appeal."

By 12 & 13 Vict. c. 45, s. 16, "No recognizance entered into pursuant to any statute or statutes for the prosecution and trial of any appeal shall be deemed to be forfeited . . . by any submission to arbitration under the provisions of this Act."

When the appeal is referred by the sessions for arbitration, they do not thereby part with their jurisdiction over the ultimate decision on the appeal: the reference is made in aid of their judgment: *R. v. Limehouse*, 19 Vin. Abr. 348; see tit. "Special Case," *infra*. The arbitrator cannot determine the validity of the rate; that is a matter of law for the sessions, or for consideration on a special case: see *Thorpe v. Call*, 1 M. & W. 531. The arbitrator may be empowered to state a case on a point of law: *London Dock Co. v. St. Paul's, Shudwell*, 32 L. J. Q. B. 30. He need not state his reasons: *Jones v. Corry*, 8 L. J. C. P. 89; *Hodgkinson v. Fernie*, 26 L. J. C. P. 217.

Where the award is made, the party taking it up is bound to produce it at the sessions for enrolment, and on refusal, the party will be compelled by *mandamus* to do so, as the sessions could not act, unless the original be produced: *Lord v. Standish*, referred to in Leem. and Cross Quar. Sess., p. 352, 2nd ed., as in M.S. (T. T. 1856), and mentioned as incorrectly reported, as by consent, in 27 L. T. R. 185. (Sir R. A. Cross was counsel in the case.)

The Sessions cannot alter the award; their only duty is ministerial to enter up the judgment, and no adjournments are requisite of the appeal, as any future sessions is bound to enter the award as their judgment. *West London Railway Co. v. Fulham Union*, L. R. 5 Q. B. 361; also *eo nom. R. v. Middlesex*, 40 L. J. M. C. 109.

In that case it was held that the arbitrator could not award costs unless that power was distinctly given to him. And where he has power to award costs he should himself ascertain the amount. *Clerk v. Brinbrook*, 20 L. T. R. 115.

The sessions at which the award is enrolled has no

power to award costs. *R. v. Middlesex JJ.*, L. R. 5 Q. B. 361; 40 L. J. M. C. 109; *R. v. Yorkshire W. R.*, 34 L. J. M. C. 142.

Should the case be referred back to the arbitrator to ascertain the costs he need not go into fresh evidence. *Re Huntley*, 1 E. & B. 787.

The costs may be taxed "out of sessions," if no objection has been made to such a course at the time of reference:—see *The Southampton Gas Light & Coke Co. v. the Southampton Union*, 46 L. J. M. C. 238.

BAKER.

Bread to
be sold by
weight.

All bread, not being French or fancy bread, is to be sold by weight, under 6 & 7 Will. 4, c. 37, s. 4. See also the Weights and Measures Act, 1878, s. 19. The weight is to be taken after the baking, *Jones v. Huxtable*, L. R. 2 Q. B. 460; 36 L. J. M. C. 122. *Hill v. Browning*, L. R. 5 Q. B. 453; 22 L. T. 584; 19 W. R. 21. Where a customer asks for bread to be sold by weight the vendor is bound to do so; but not unless requested. *R. v. Kennett*, L. R. 4 Q. B. 565; 10 B. & S. 534; 20 L. T. 656; see also *Williams v. Diggins*, 16 L. T. 492; *Mitton v. Troke*, 20 L. T. 563.

Scales to
be carried.

Under sec. 7 the baker is "constantly" to carry in his cart correct scales under a penalty of £5. See *Robinson v. Cliff*, 1 Ex. D. 294; 45 L. J. M. C. 109; 34 L. T. 689. *R. v. Kingsby*, 15 J. P. 65. And to have under the penalty of £5, weights and scales in his shop, 6 & 7 Will. 4, c. 34, s. 6. This information is to be laid within 48 hours or reasonable time sec. 31 (a).

What
"fancy
bread."

The fancy bread excepted means only such bread as at the time the legislature passed the Act, was sold under the denomination of "fancy or French bread,"—as the French roll, &c. The Act was never intended to except a large quartern loaf, merely because it was not baked in batches and so became crusty. The well-known Aërated bread is not fancy bread. *The Aërated Bread Co. v. Gregg, or Grigg*, L. R. 8 Q. B. 355; 42 L. J. M. C. 117; 28 L. T. 816; the court remarking on *R. v. Wood*, 38 L. J. M. C. 144; L. R. 4 Q. B. 559; 20 L. T. 654; 10 B. & S. 534.

(a) 3 Geo. 4, c. 106 (ss. 27, 28), applies to London and within the bills of mortality, and ten

miles of the Royal Exchange, with like provisions as in 6 & 7 Will. 4, c. 37.

Baking or carrying on the business of a baker on a Sunday is prohibited by sec. 14 of 6 & 7 Will. 4, c. 34, under a penalty for the first offence of 10s., or imprisonment with or without hard labour for seven days;—for a second offence, 20s., or fourteen days' imprisonment with or without hard labour; for a third and subsequent offence 40s., or imprisonment for one calendar month with or without hard labour; (these scales are similar to those in the Summary Jurisdiction Act, 1879 *infra*.)

Not to carry on business on Sunday.

If the offence of which a master baker has been convicted arises through the wilful act, neglect or default of a journeyman or other servant, a justice may order what sum he shall pay to his master as recompense, 6 & 7 Will. 4, c. 37, s. 13. The information must be on oath and within six calendar months, 11 & 12 Vict. c. 43, s. 11. See *Wray v. Toke*, 12 Q. B. 492, this need not appear in the information.

Offence by act of servant.

A person cannot be convicted of using prohibited mixtures or ingredients in making bread for sale, unless there be knowledge either in himself or the person employed by him of the presence of the ingredient: *Gore v. James*, L. R. 7 Q. B. 135; 41 L. J. M. C. 19; 25 L. T. 593; 20 W. R. 201. (See also tit. "Adulteration.")

Knowledge.

On conviction an appeal lies under 6 & 7 Will. 4, c. 37, ss. 25, 26, to the quarter sessions by the person aggrieved, such sessions being those for the county, division, city, liberty, town or place where the judgment was given. The appellant will enter into his recognizance, with two sureties, in double the amount of the penalty, within twenty-four hours of the conviction to prosecute his appeal at the quarter sessions, and pay costs.

Appeal.

Should judgment be affirmed, the appellant will forthwith pay down the sum adjudged to have been forfeited, together with the costs, or in default be committed.

As to the notice of appeal see *Ex parte Blues*, 5 E. & B. 291; 24 L. J. M. C. 138; *R. v. Salop JJ.*, 50 L. J. M. C. 72, and tit. "Summary Jurisdiction Acts," *infra*.

The court has power to give "reasonable costs" against the informer: see *R. v. Smith*, 29 L. J. M. C. 216; *R. v. Perdey*, 34 L. J. M. C. 4, (and see those cases, tit. "Costs").

BATHS AND WASH-HOUSES.

9 & 10 Vict. c. 74.

By 9 & 10 Vict. c. 74, s. 30, every person who shall feel aggrieved by any bye-law, order, direction or appointment of or by the council or commissioners shall have the like power of appeal to the general quarter sessions as under the provisions of the "Companies Clauses Consolidation Acts, 1845" (incorporated with this Act), he might have if feeling aggrieved by any determination of any justice with respect to any penalty.

BETTING-HOUSES.

(See *Tit. "Gaming."*)

2 & 3 Vict. c. 47; 8 & 9 Vict. c. 109; 16 & 17 Vict. c. 119;
17 & 18 Vict. c. 38; 37 Vict. c. 15.

No house,
&c., to
be kept
open for
betting.

The "Betting House Act, 1853," 16 & 17 Vict. c. 119 (now called "the principal Act") was amended by the 37 Vict. c. 15, "The Betting Act, 1874." By the Act of 1853, sec. 1, "no house, office, room or *other place*, shall be opened, kept, or used for the purpose of the owner, occupier or keeper thereof, or any person using the same, or any person procured or employed by or acting for or on behalf of such owner, occupier or keeper, or person using the same, or of any person having the care or management, or in any manner conducting the business thereof, *betting with persons resorting thereto*; or for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier, keeper or person as aforesaid, as or for the consideration for any assurance, undertaking, promise or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse-race, or other race, fight, game, sport or exercise, or as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency as aforesaid; and (sec. 2) every house, &c., opened, kept or used for the purposes aforesaid, or any of them, is hereby declared to be a common nuisance, and contrary to law.

Deemed a
gaming
house.

Betting-houses are deemed "gaming-houses" within 8 & 9 Vict. c. 109 (16 & 17 Vict. c. 119, s. 2).

By 2 & 3 Vict. c. 47, s. 48, the commissioners of police may authorise superintendents and constables to enter places believed to be used as gaming-houses, and to seize and destroy tables, &c. And the owner or keeper, banker or croupier, and other persons acting in the conduct of the house will be liable to a penalty not exceeding £100, or six months' imprisonment; persons in the house without lawful excuse, will be under a penalty not exceeding £5.

By 8 & 9 Vict. c. 109, s. 3, justices (excepting within the Metropolitan police district) may authorise constables under warrant to enter places suspected to be gaming-houses; and sections 4 and 6 give similar penalties as those imposed under 2 & 3 Vict. c. 47, s. 48 (*sup.*).

By sec. 5 it is not necessary to prove the persons were playing for money.

Sec. 20 gives the bare right of appeal on the party entering Appeal. into his recognizance within twenty-four hours, with two sureties, to try the appeal. See *ante*, p. 165.

Much discussion has been raised in consequence of the Place. ingenious manner in which these statutes have been sought to be evaded by the betting community, and in particular as to the meaning of the words, "other place."

One device was the using a large umbrella with an announcement on it "G. Bows, Victoria Club, Leeds;" and a card exhibited "We pay all debts first past the post;" B. was calling out offering to make bets; this was held to be the using a fixed "place" for betting on which a conviction could be made under 16 & 17 Vict. c. 119, s. 3. *Bows v. Fenwick*, 9 L. R. C. P. 339; 43 L. J. M. C. 107; 30 L. T. 524; 22 W. R. 804. See also *Galloway v. Maries*, 8 Q. B. D. 275; 51 L. J. M. C. 53.

An inclosed ground where a pigeon-shooting match is taking place, to which the public are admitted on payment of money, and in which betting takes place, is a "place" kept and used for the purpose of betting within the Act. *Eastwood v. Millar*, 9 L. R. Q. B. 440; 43 L. J. M. C. 139; 30 L. T. R. 716. So also a ground used for cricket, *Haig v. Sheffield Corporation*, 10 L. R. Q. B. 102; 44 L. J. M. C. 17; 31 L. T. R. 536. In this case the evidence satisfied the magistrates that the occupier knew what was going on, and that he took no steps to prevent the betting, and the court held he was rightly convicted under the Act, secs. 1 and 3: *Haigh v. Sheffield (Corporation)* (*supra*).

A tree in Hyde Park as a place of appointment and resort to bet is not within the Act. *Doggett v. Catterns*, 19 C. B.

N. S. 735 ; 34 L. J. C. P. 159 ; 12 L. T. N. S. 355 ; nor is a club where the members habitually bet within the Act. *Oldham v. Ramsden*, 44 L. J. C. P. 309 ; 32 L. T. N. S. 825.

An agent receiving money by letter to invest on horse-racing is within the sections. *Wright v. Clarke*, 34 J. P. 861.

Penalty on
owner or
occupier.

Sec. 3, Act 1853. Any person who being the owner or occupier of any house, office, room or place, or a person using the same, shall open, keep or use the same for the purposes herein-before mentioned, or either of them ;—or any such person who shall knowing and wilfully permit the same to be opened, kept, or used by any other person for the purposes aforesaid or either of them ; and any person having the care or management of, or in any manner assisting in conducting the business of any house, office, room or place opened, kept, or used for the purposes aforesaid, or either of them, will be subject to a penalty not exceeding £100 and costs ; or in default, or in the first instance, imprisonment with or without hard labour for not exceeding six calendar months : but subject when such penalty is reduced to below £5 to the scale for imprisonment under Sum. Juris. Act, 1879.

Receiving
deposit on
any bet.

Section 4. Any such person as before mentioned in the preceding sections “ Who shall receive, directly or indirectly, any money or valuable thing as a deposit on any bet, on condition of paying the same on the happening of any event or contingency of or relating to any of the events before enumerated, or as or for the consideration for any assurance, undertaking, promise, or agreement, express or implied, to pay, or give thereafter any money or valuable thing on any such event or contingency, and any person giving any acknowledgment, note, security, or draft on the receipt of any money or valuable thing so paid or given as aforesaid, purporting or intended to entitle the bearer or any other person to receive any money or valuable thing on the happening of any such event or contingency as aforesaid : ” Penalty not exceeding £50 and costs : in default, or in the first instance, three months’ imprisonment with hard labour, when the penalty is below £5.

Exhibiting
betting
placards.

By section 7,—Any person exhibiting or causing to be exhibited or published any placard, handbill, card, writing, sign, or advertisement whereby it shall be made to appear that any such house, &c., before mentioned is opened, kept, or used for the purpose of making bets or wagers as aforesaid, or for the purpose of exhibiting lists for betting, or with intent to induce any person to resort thereto for the purpose of betting ; or any person who on behalf of the owner or

occupier of any such house, &c., or person using the same, shall invite other persons to resort thereto for the purpose of betting in manner aforesaid, will incur a penalty not exceeding £30 and costs; in default, or in the first instance, not exceeding two calendar months' imprisonment, with or without hard labour; where the penalty is less than £5, (*supra*) (a).

Under section 6 the Act does not apply to a person holding stakes to be paid to the winner of a race, or lawful game, sport, or exercise, or to the owner of any horse engaged in any race.

The information must be laid within six months of the offence. *Morant Taylor*, 45 L. J. M. C. 78; L. R. 1 Ex. D. 188. Information within six months.

As to the form of information and the allegation of time, *Form.* see *Onley v. Gee*, 30 L. J. M. C. 222; 4 L. T. N. S. 338; see 11 & 12 Vict. s. 43.

The landlord's own books relating to betting, showing by marks therein that he had recently used them, are evidence against him, and on which a conviction could be made; *Foot v. Butler*, 41 J. P. 792; in which case the information was at the instance of an informer who had made bets with the defendant.

BILLIARDS.

8 & 9 Vict. c. 109; and Licensing Act, 1872.

The justices at their "licensing sessions" grant billiard and bagatelle licences, 8 & 9 Vict. c. 109, s. 10; and see Licensing Act, 1872, s. 75, as to notices. But on a refusal of the licence there is no appeal, *Ex parte Chamberlain*, 4 Jur. N. S. 477 Q. B.; *R. v. Devonshire*, 8 E. & B. 644. Licence. No appeal.

A conspicuous notice must be exhibited that the place is Exhibition of notice of licence.

(a) The same penalty now applies to a person sending, exhibiting or publishing any letter, circular or telegram, placard, handbill, card, or advertisement whereby it is made to appear that any person in the United Kingdom or elsewhere, will on application give information or advice on any such bet or wager, or such event or contingency as mentioned in the Act, or will make such bet on behalf of any person,—or with intent to induce any person to apply for such information or advice,—or inviting any person to take any share in or in connection with such bet (37 & 38 Vict. c. 15, s. 3).

licensed, under a penalty to the keeper of £10 for every day on which the billiard table, &c., shall be used without such notice ; or committal to prison for not less than one month (see the right of appeal on committal under the Summary Jurisdiction Act, 1879, sec. 19) ; or he may be proceeded against as the keeper of a common gaming-house ; s. 11, 8 & 9 Vict. c. 109.

Section 13 limits the time for playing.

Under the Licensing Act, 1872, s. 75, any person convicted of an offence against the tenor of a billiard licence will be punished under that Act in the same manner as a licensed person, as for suffering any gaming or any unlawful game to be carried on on the licensed premises (*ib.* sec. 17).

Under sec. 52, Licensing Act, 1872, the right to appeal to the quarter sessions is given upon a conviction (see the sec. Tit. "Alehouse"), p. 71.

The offences against the tenor of the billiard licence are :—

1. Not keeping the words "licensed for billiards" on the outside of the house ;
2. Wilfully or knowingly permitting drunkenness ;
3. Knowingly allowing the consumption of exciseable liquors ;
4. Knowingly suffering unlawful games ;
5. Knowingly suffering persons of notoriously bad character to assemble in the house ;
6. Opening the house for play, or allowing any play therein after one and before eight o'clock in the morning, or keeping it open or allowing any play therein on Sundays, Christmas Day or Good Friday, or on any day of public fast or thanksgiving.

These offences are punishable like those of gaming or suffering unlawful games under sec. 17, Licensing Act, 1872 (*supra*, p. 77).

As to the offence No. 2, see sec. 13, Licensing Act, 1872 (*supra*, p. 75).

Beer and sweets are not exciseable liquors to be included within offence No. 3 : see *Jones v. Whittaker*, L. R. 5 Q. B. 541 ; 39 L. J. M. C. 139 ; *R. v. Lancashire*, 7 Q. B. 839 ; S. C. *eo nom.* *Lancashire v. Staffordshire JJ.*, 26 L. J. M. C. 171.

BOROUGH RATE.

Under 5 & 6 Will. 4, c. 76, s. 92, where the borough fund is insufficient for the payment of the expenses to be incurred in carrying into effect the provisions of the Act in order to raise the amount estimated, the council is authorised and required from time to time to make a borough rate in the nature of a county rate, and for that purpose the council will have within their borough all the powers which the county justices have at quarter sessions by virtue of 55 Geo. 3, c. 51. And if *any person* think himself "aggrieved" by any such rate he may appeal to the Recorder at the next quarter sessions for the borough in which such rate has been made: or in case there shall be no such Recorder, to the justices at the next quarter sessions for the county within which such borough is situate, or to which it is adjacent: and such Recorder or justices shall hear and determine the same, as in the case of an appeal against any county rate (a).

The borough rate need not be made in public. *Jones v. Johnson*, 5 Exch. 862.

In *R. v. Bath (Recorder)*, 9 A. & E. 871, the court held that, as with a county under 55 Geo. 3, c. 51, s. 14, the remedy by appeal against a borough rate was limited to cases of the total omission of parishes from a rate, or of the unequal apportionment of the rate among the parishes subjected to it; no appeal being given to individuals. But, as suggested by Mr. Geary in his note to this section in *Rawl. on Corp.*, this view can hardly be supported where the words of the section give an express personal appeal to "*any person*" who "shall think *himself* aggrieved." In some instances a borough might consist of only one parish, as in the borough of Bradninch, where the borough and parish are co-extensive. See *Were v. Devon Clerk of the Peace*, 6 B. & S. 7, 34 L. J. M. C. 47. Under sec. 51, 15 & 16 Vict. c. 81, every place in which rates in the nature of county rates may be levied, having a separate commission of the peace, and not subject to the jurisdiction of the county in which such place shall lie, nor contributing towards the county rates made for such county at large, will be included in the word "county" in that Act.

(a) As to the borough liability to contribute towards a county rate under sec. 117 of 5 & 6 Will.

4, c. 76, see *R. v. Monck*, 46 L. J. M. C. 251; 2 Q. B. D. 544 (on app.), and cases there cited.

The borough of East Looe was an ancient corporation by prescription confirmed by Queen Elizabeth; and by charter of King James II. the borough was empowered to hold sessions of the peace, and with a *non intromittent* clause to the justices of the county. No rate in the nature of a county rate had ever been assessed in the borough. East Looe was held to be within the definition, and not liable to the county rate. *East Looe (Mayor) v. Cornwall JJ.*, 3 B. & S. 20; 31 L. J. M. C. 245.

It was held otherwise where there was no evidence of the *non intromittent* clause in the charters. *Were v. Devon Clerk of the Peace*, 6 B. & S. 7; 34 L. J. M. C. 47.

The rate must not be retrospective. *R. v. Dublin Corp.*, 2 W. R. 371, Q. B. D.

The appellant need not go before the assessment committee, which could give no relief: *R. v. L. & N. W. Ry.*, 46 L. J. M. C. 102; but he must show a grievance. See *ante*, p. 113.

BRIDGES.

Stat. 22,
Hen. 8.
"The
Statute of
Bridges."

The statute 22 Hen. 8, c. 5, known as the Statute of Bridges, and passed in affirmation of the Common Law (2 Inst. 700) recited in sec. 2 that "in many parts of the realm it cannot be known and proved what hundred, &c., nor what person certain a body politic ought of right to make such bridges decayed, by reason whereof such decayed bridges for lack of knowledge of such as ought to make them, for most part lie long without any amendment, to the great annoyance of the King's subjects."

For remedy thereof sec. 3 enacts that in every such case where the bridge is without any city or town corporate, it shall be "made" by the inhabitants of the shire or riding in which the bridge shall be; and if within a city or town corporate then by the inhabitants thereof; and if part of such bridge be in one such jurisdiction and part in another, then the inhabitants thereof "shall be charged and chargeable to amend, make and repair such part and portion of such bridges so decayed as shall lie and be within the limits of the shire, riding, city or town corporate wherein they be inhabited at the time of the same decays."

And by sec. 4, in every such case, "for speedy reformation and amending such bridges," the justices within the limits of

their commissions may call before them the constables of every town and parish wherein such bridges or any parcel thereof may be, or else two of the most honest inhabitants within every such town or parish, "by the discretion of the said justices of the peace or *four* of them at the least," and upon the appearance of such constables or inhabitants the justices or *four* of them, with the assent of such constables or inhabitants, "shall have power and authority to tax and set every inhabitant in any such city, town, or parish within the limits of their commissions and authorities to such reasonable aid and sum of money as they shall think by their discretions convenient and sufficient for the repairing, re-edifying and amendment of such bridges, and after such taxation made the said justices shall cause the names and sums of every particular person so by them taxed to be written upon a roll indented." The clause thus gives the justices power to appoint two collectors, to collect such sums and to distrain on non-payment.

The Statute of Bridges created no *new* liabilities. No city or town, *not being a county* of itself, was *primâ facie* liable to repair its bridges; that obligation was only by prescription: *R. v. Broughton*, 5 Burr. 2700; and which duty commencing with the reign of Richard I. (A.D. 1189), or by custom, or by reason of tenure of adjacent lands, or *ratione clausuræ*: *Robbins v. Jones*, 33 L. J. C. P. 5 (Erle, C. J.); see *R. v. Ashby Folville*, 35 L. J. M. C. 154; L. R. 1 Q. B. 213. As to the repair of a modern bridge built over a canal, see *R. v. Kerrison*, 3 M. & S. 526; *R. v. Ely*, 15 Q. B. 827; 19 L. J. M. C. 223. No indictment has been sustained before or since the statute which charged any district, including a city or town corporate, not being a county, with liability to repair simply, which is sufficient in the case of a county, because upon that, as Lord Coke in his reading observes, and is well known, a *primâ facie* liability is cast (per Lord Denman, C. J.): *R. v. New Sarum*, 7 Q. B. 954-5; *R. v. Yorkshire W. R.*, 2 East. 342, 348, 351; *R. v. Ecclesfield*, 1 B. & Ald. 348, 355, 359; *R. v. Yorkshire W. R.*, 4 B. & Ald. 623.

In *R. v. New Sarum (sup.)* the borough was enlarged under stats. 2 & 3 Will. 4. c. 64, s. 35 and 5 & 6 Will. 4, c. 76, s. 7 by the addition of a parish in the same county containing a bridge, which until then the county had repaired. In the absence of any evidence that the borough had been used to repair and maintain any bridges, it was held that the transfer of the new district did not render the borough

liable to repair the bridge. See *R. v. Dorset*, K. B. E. T. 1825, MSS. Glen's Highways, 2nd Ed. p. 188.

Where
boundaries
of cities
enlarged.

But where the crown enlarges the boundaries of a city, *being a county* in itself, by annexing a part of the county, the enlarged part is to be considered as parcel of the old county of the city so as to charge the inhabitants with the repairs of bridges; the statute does not lay the charge until the bridge is in decay, and in the case of *R. v. Norwich*, 1 Stra. 177, the decay was not until after the annexation from the county to the city; see *R. v. St. Peter's, York*, 2 L. Raym. 1249. In the case of *R. v. Gloucestershire*, 4 A. & E. 689, a portion of the county had been added to the city of Bristol, and for the purpose of the making an order for the stopping up a highway in such portions of Bristol the transfer of a portion of the county to Bristol was held to be complete, Bristol being *a county* in itself (*a*).

That case was referred to in argument in *R. v. New Sarum* (*sup.*) but did not affect the decision; the distinction rests in this, that New Sarum was *not* a county.

boundaries
of counties
under 2 &
3 Will. 4,
c. 64, 7 & 8
Vict. c. 61.
See also
p. 219).

2 & 3 Will. 4, c. 64, and 7 & 8 Vict. c. 61, fixed the boundaries of counties, and transferred the liability to repair bridges from the one county to the other. *R. v. Brecknockshire*, 15 Q. B. 813; 19 L. J. M. C. 203. It was held in that case, that where the mid-channel of the river is the boundary of the county, and a portion of land abutting upon the river is transferred from the one county to the other, the river to the mid-channel is included, and with it the responsibility of repairing the part of the bridge built thereover.

Turnpike
roads be-
coming
ordinary
roads.

By 33 & 34 Vict. c. 73, s. 12, when turnpike roads became ordinary roads (and very few, if any, turnpike roads now exist), the bridges which were repaired by the trustees of the roads, became county bridges and so repairable. But such bridges will be taken as having been built after 5 & 6 Will. 4, c. 50 (sec. 21), 20th March, 1836.

Present-
ment and
order for
repair.

Under the statute 1 Anne, st. 1, c. 18, s. 2, the court of General or Quarter Sessions upon due presentment, that a bridge within their jurisdiction is out of repair, may assess upon every town, parish or place, in proportions upon each respective town and parish as they usually have been assessed towards the repair of bridges. Provision is then made for the collection of the money, and for distress and sale on non-payment within ten days after demand. The

(*a*) See *R. v. Gloucester* and other cases, under tit. "Highways," *infra*.

making the presentment is a condition precedent to the obligation of the justices to make an order. *Re Newport Bridge*, 2 E. & E. 377 ; 29 L. J. M. C. 52.

Lord Ellenborough, C. J., said in *R. v. Salop*, 13 East, 95, "all public bridges are *primâ facie* repairable by the inhabitants of the county, without the distinction of foot, horse or carriage bridges, unless they can show that others are bound to repair particular bridges." But the bridge must be within the common law, and be erected over such water as answers the description *flumen vel cursus aquæ* ; water flowing between channels more or less defined, although such channels may be occasionally dry. *R. v. Derbyshire*, 2 Q. B. 745. By 22 Hen. 8, c. 5, s. 9 the inhabitants bound to repair the bridge, are also liable to maintain the approaches (a) to it for the space of 300 feet distant from each end of the bridge. Where the road by which a bridge was approached was at times flooded by the river, a raised causeway was made with arches and culverts at intervals for the passage of the flood water, and which were necessary for the safety of the bridge and causeway ; the inhabitants were held not to be bound to maintain such arches as they were at a distance of more than 800 feet from the end of the main bridge. *R. v. Yorks. W. R.*, 5 Taunt. 584 ; *R. v. Oxfordshire*, 1 B. & Ad. 289. It is, however, a question of fact in each case whether an arch thrown over *cursus aquæ* is such as to be a public bridge ; there is no general rule of law that arches under which there is not a constant stream flowing cannot form a county or public bridge ; though there cannot be a bridge the county is bound to repair where there is no *cursus aquæ*. *R. v. Whitney*, 3 A. & E. 69 ; *R. v. Gloucestershire*, 1 Car. & M. 506. In the absence of evidence to the contrary a prescription to repair a bridge includes the repair of the approaches. *R. v. Lincoln*, 8. A. & E. 65 ; *R. v. Devonshire*, 14 E. 477 ; *R. v. Oxfordshire*, 1 B. & Ad. 289. "County bridges" includes hundred bridges. *R. v. Chart & Longridge*, L. R. 1 C. C. 237 ; 39 L. J. M. C. 107.

Under 43 Geo. 3, c. 59, s. 5 (Lord Gower's Act), to render the county liable to repair a bridge built by any private person, body politic or corporate, it must have been erected

Public bridge — by whom repairable, *primâ facie*.

Lord Gower's Act, 43 Geo. 3, c. 59.

(a) In the reign of Edwd. 3 the approaches to a bridge, the fabric of which, but not the *fines ejusdem pontis* (which an ecclesiastical corporation sole was bound by prescription to repair), were

held to be excrescences of the bridge, and, as such, *primâ facie* repairable by the same party as the bridge itself: *Abbot of Chombe's Case*, 43 Ass. 275. B. p. 2, 37.

in a substantial manner, under the direction, or to the satisfaction of the county surveyor or person appointed by the justices. See *R. v. Yorkshire W. R.* 5 Burr. 2594; *R. v. Kent*, 2 M. & S. 513; *R. v. Bucks*, 12 East, 192; *Surrey Canal Co. v. Hall*, 1 Scott, N. R. 264; see also *R. v. Somerset*, 38 L. T. R. 452, Q. B. D.; 33 & 34 Vict. c. 73, s. 12.

41 & 42
Vict. c. 77.
Certifying
bridges as
public for
repairs.

Where any bridge had been erected before the passing of 41 & 42 Vict. c. 77, s. 21 (16 Aug. 1878) in any county without such superintendence, as provided in sec. 5 of 43 Geo. 3, c. 59, s. 5, and which is certified by the county surveyor or other person appointed in that behalf to be in good repair and condition, shall, if the county authority see fit so to order, become and be deemed to be a bridge which the inhabitants of the county shall be liable to maintain and repair. See *R. v. Somerset*, 38 L. T. 452, Q. B. D.

Contribu-
tion from
county
rates.

And by sec. 22, the county authority may make contribution out of the county rates towards the cost of any bridge to be thereafter erected, after the same has been certified in accordance with sec. 5 of 43 Geo. 3, c. 59, as being a proper bridge to be maintained by the county. But such contribution is not to exceed one-half the cost of erecting such bridge.

Changing
situation of
county
bridges.

Before 14 Geo. 2, c. 33, s. 1, the justices had no power to change the situation of county bridges (Buller, J.): *R. v. Glamorganshire*, 5 T. R. 283. Under that section the general or quarter sessions are empowered to purchase land out of the county rate (a), and not exceeding one acre, "for the more commodious enlarging or convenient rebuilding" the county bridge. And 43 Geo. 3, c. 59, s. 2, enables the sessions to widen, improve, and make any such bridge or roads at the end thereof, and make them more commodious to the public; and in case of necessity to order decayed bridges to be taken down and rebuilt either on the old or new site, within 200 yards of the former one. And provision is made for the purchase of land, and the empanneling a jury to assess the compensation. But before any proceedings are taken by the justices, presentment must be duly made of the insufficiency of the bridge. See *ante*, *R. v. Newport Bridge*, 2 E. & E. 377; 29 L. J. M. C. 52.

Compensa-
tion in the
purchase of
land.

These provisions as to the ascertaining the compensation for the purchase of the land were to be ascertained in the same manner as enacted in 13 Geo. 3, c. 78; but, although

(a) See 12 Geo. 2, c. 29.

that statute is repealed by 5 & 6 Will. 4, c. 50, the provisions are substantially re-enacted in 43 Geo. 3, c. 59, and form part of that Act, which remains unrepealed. See also the provisions in 5 & 6 Will. 4, c. 50. See *R. v. Merionethshire*, 6 Q. B. 343; *R. v. Brecknockshire*, 15 Q. B. 813. As to the pulling down the old bridge before the new bridge in a different site was passable, see (*per* Bayley, J.); *R. v. Dorset JJ.*, 15 East, 594.

For the immediate repair and amendment of bridges, 32 Geo. 3, c. 110, s. 1, enables the justices in general or quarter sessions to appoint annually, at the April sessions, two or more of their body to superintend the repairs of the bridges situate in the county, and for preventing their further decay, and to order any immediate repair, not exceeding in cost £20. And by sec. 2, the justices in general quarter sessions or great sessions next after the completion of the repairs may order payment of *such* sum not exceeding *ten (a)* pounds, as shall be sufficient to pay for such repairs to be made out of the county rate, although no presentment shall have been made of the want of such reparation as directed by 12 Geo. 2, c. 29, s. 13. Before such payment the justices who had ordered the repairs must have returned their certificate to the sessions, stating the nature of the repairs and defects, damage or injuries which they had ordered to be repaired, and their reasons for ordering the immediate repairs. Immediate repairs.

The surveyors of county bridges and persons contracting for the repairs have the same power and authority to search for and obtain all necessary materials for the purpose of making such repairs as is vested in surveyors of highways: 43 Geo. 3, c. 59, s. 1; 54 Geo. 3, c. 90, s. 2; 55 Geo. 3, c. 143, s. 1; 5 & 6 Will. 4, c. 49, s. 22. Power to obtain material for repairs.

55 Geo. 3, c. 143, s. 1, enacts that the surveyor of bridges in every county appointed by the general quarter sessions, and also the bridge master, or all persons under contract for the rebuilding or repairing of any public bridge built or repaired at the expense of the inhabitants of any county, hundred or general division, may, with the consent and by the order of two justices of the peace acting for the county in which such bridge is intended to be rebuilt or repaired first obtained for that purpose, search for, work, dig, get and carry away any stone in, from or out of any Mode of compensation.

(a) This payment of only £10 out of the £20 which may be incurred by the justices is a singular error in the clause.

quarry whatsoever within the county or counties to which such bridge may belong, other than and except such quarries as may be situated within a garden, yard, avenue to a house, lawn, park, paddock or inclosed plantation, or as may "now or hereafter" have ornamental timber trees growing thereon, without the licence or consent of the owner, as such surveyor or persons shall judge necessary for the rebuilding or repairing of such bridges, provided such quarry shall have been worked within the last three years preceding the time when such bridge shall be about to be rebuilt or repaired, the surveyor or other persons making such satisfaction and recompense for the value of such stone, and also for the damage to be done to such quarry by the getting and carrying away the same, as shall be agreed upon between them and the owner, occupier or other person interested in such quarry; and in case they cannot agree, or such owner or occupier or other person interested shall refuse to treat, then in every such case the justices of the peace at their general or quarter sessions, or any two or more of them appointed for that purpose, fourteen days' notice having been given to the owner or his agent of the intention to require a jury, shall cause the value of such stones and amount of such damage to be inquired into and ascertained by a jury of indifferent men of the county, riding, division, city, town, liberty or precinct wherein the same shall be situated, and to that end shall summon and call before such jury and examine upon oath (which oath any two or more of such justices may administer) any person whomsoever, and shall, by ordering a view or otherwise, use all ways and means for the information of themselves and of such jury in the premises; and when such jury shall have inquired of and ascertained the value of such stones and amount of such damage, the justices shall thereupon order that the sum or sums which shall so appear to be the value of such stones and amount of such damage shall be paid, which verdict or inquisition shall be filed of record by the clerk of the peace or other officer having the custody of the records of the county, riding, division, city, town, liberty or precinct, and shall be final and conclusive to all intents and purposes whatsoever against all parties and persons whomsoever claiming or to claim, in possession, remainder, reversion or otherwise, their heirs and successors, as well absent as present, infants, lunatics, idiots and persons under coverture or any other disability whatsoever, corporations, guardians,

committees, husbands, trustees and attornies, or any other person or persons whomsoever.

Sec. 2 provides for the summoning of the jury.

CEMETERIES.

A person wilfully destroying or injuring any building, wall or fence belonging to a cemetery, or any tree or plant therein, or disfiguring any wall thereof, or wilfully destroying, injuring or defacing, any monument, &c., within the cemetery, or doing other wilful damage, will be liable to a penalty of £5: 10 & 11 Vict. c. 65, s. 58. If with imprisonment in default, see Scale—"Sum. Juris. Act, 1879, s. 5." Wilful damage to cemeteries

Under sec. 59, 10 & 11 Vict. c. 65, persons playing a game of sport in a cemetery, disturbing those attending a burial, or committing a nuisance in the cemetery, will be liable to a similar punishment as in s. 58.

But the party convicted may also appeal under the appeal provisions of the Railway Clauses Consol. Act, 1845, 8 & 9 Vict. c. 20, s. 157; see *infra, post*, that title.

The right of appeal is given under sec. 62, 10 & 11 Vict. c. 65, incorporating all the provisions of the Railway Clauses Act, 1845, respecting the determination of any matter referred to the justices: see *infra*, Tit. "Railway Clauses Act."

The information must be laid within six months: 8 & 9 Vict. c. 20, s. 151; see also the Sum. Juris. Act, 1879, *infra*.

The appellant may elect to appeal under the Sum. Juris. Act, 1879; see sec. 32 (*infra*).

CERTIORARI.

The writ of certiorari issues from the crown side of the Queen's Bench Division. Bac. Abr. 349; Com. Dig. Certiorari (a). It is not granted as a matter of right, save on the application of the Attorney-General in his official capacity, but rests in the discretion of the court. *In re Lord Listowel's Fishery*, 9 Ir. R. C. L. 46, Q. B.; 2 Hawk. P. C. c. 27, s. 27; Issue of writ from Crown office. Not of right.

(a) Each of the courts, whether of Common Law or Chancery, could issue the writ; but as regards sessions practice the writ always issues from the Queen's Bench.

In re Mayo County, 14 Ir. R. C. L. 392, Q. B. ; *Arthur v. The Commissioners of Sewers*, 8 Mod. 331.

Means of
controlling
inferior
courts.

By means of this writ the Queen's Bench exercises its superintending jurisdiction over other tribunals for quashing or confirming their acts. Coke, 4 Inst. 71 ; Bac. Abr. court of K. B. (A.) 3 s. 42. This jurisdiction is absolute in the court unless the power to issue the writ be taken away by enactment ; and even then the right of the Crown will not be affected except it be expressly named ; *R. v. Bodenham*, Cowp. 79 ; *R. v. Davies*, 5 T. R. 628 ; see also an elaborate judgment of Lord Kenyon in *R. v. Cumberland*, 6 T. R. 194 ; *R. v. Allen*, 15 East, 333 ; *R. v. Lewis*, 4 Burr. 2458 ; *R. v. Eaton*, 2 T. R. 89 ; *In re Lord Listowel's Fishery (sup.) (a)*.

Granted
where a
grievance.

Although the writ is not in general as "of right," yet where the applicant has a peculiar grievance or wrong of his own, and is not acting only as one of the public (*b*), he is entitled to relief *ex debito justitiæ*. *R. v. Surrey JJ.*, L. R. 5

(a) No indictment, except those against bodies corporate not authorised to appear by attorney (now solicitor) in the court, can be removed into the court of Q. B. or into the C. C. C. by certiorari at the instance of the prosecutor or the defendant (except at the instance of the Attorney-General, as was done in *R. v. Castro*, alias *Tichborne*), unless it appear that a fair and impartial trial cannot be had in the court below, or that some question of law more than usually difficult or important is likely to arise on the trial : 16 & 17 Vict. c. 30, s. 4.

An indictment against a corporation has been held to be removable as of course, and the prosecutor was not bound to enter into any recognizance : *R. v. Manchester*, 26 L. J. M. C. 65 ; 7 E. & B. 453.

When an indictment is removed to the civil side of the court to be tried at *nisi prius*, the judge who tries the case, by the practice of the Crown Office, has no power to amend the indictment by altering the plea of "not guilty" to one of "guilty," but the ver-

dict of the jury should be taken. In a case tried at the Surrey Assize at the Spring Assize, 1878, Lord Coleridge, in *R. v. Wallace*, so amended the record, and subsequently the Crown Office refused to recognise such amendment which should have been alone made in that office, and much difficulty was occasioned in restoring the record, and duly amending it under an order of a judge.

The sentence on an indictment when so removed will be passed in the subsequent term, or sitting of the court, when affidavits will be heard in mitigation or aggravation. This course was adopted in *R. v. Wallace*, in which the author was counsel. A question as to the passing the sentence in a criminal case at *nisi prius* was considered in *R. v. Thomas*, 4 M. & S. 442, a. p. 8, when an indictment for *murder* was removed from the Rochester Q. S., that court by the Corporate Charter having then the power to try so serious a charge. See 14 H. 6, c. 1.

(b) *R. v. Taunton, St. Mary*, 3 M. & S. 462, 472, per Lord Ellenborough.

Q. B. 466 ; 39 L. J. M. C. 145 ; *Foster v. Foster*, 4 B. & S. 199 ; 32 L. J. M. C. Q. B. 314. But the party must not have precluded himself from taking advantage of the writ by his own conduct. *R. v. South Holland Drainage Committee*, 8 Ad. & E. 429 (a).

Formerly, when technical objections more frequently prevailed than now, and many orders were quashed wholly irrespective of the merits of the case, it became common to insert in statutes that orders and convictions should not be quashed for error in form, or be removed by *certiorari*. This met with general disapproval from the judges : Lord Kenyon spoke of the taking away the writ as being "too frequent," and that it was much to be lamented in a variety of cases that it was taken away at all. See *R. v. Jukes*, 8 T. R. 542—544, and Erle, J., in *R. v. Dickinson*, 7 E. & B. 831 ; 26 L. J. 204, expressed the opinion of the court to be that the restoration to the use of the *certiorari* would be "a salutary addition to the laws." Writ taken away by some statutes.

Although in *R. v. Dickinson* (*supra*), the court heard a case from sessions when the *certiorari* had been taken away, the parties having consented to the case being stated for its opinion, yet in *R. v. Chantrell*, 44 L. J. M. C. 94 ; L. R. 10 Q. B. 587, the court distinctly held that with or without consent it had no power to hear a case or issue the writ where the *certiorari* had been taken away ; holding in the words of Patteson, J., in *Sanders v. Vanzeller*, 4 Q. B. 276, that the court could not give itself jurisdiction which the Legislature had in express terms prohibited its having (b). And the Court, referring to the remarks of Lord Kenyon and other judges, directed the attention of the Legislature to the desirableness of an alteration in the law.

Upon the passing of the Summary Jurisdiction Act, 1879 it was enacted therein (sec. 40) that "a writ of *certiorari* or other writ shall not be required on special case. Sum. Juris. Act, 1879." Not required on special case. Sum. Juris. Act, 1879.

The issuing the writ of *certiorari* was the only means by

(a) See the similar doctrine under tit. "Appeal."

(b) See also *R. v. Cartworth*, 5 Q. B. 201 ; *R. v. Liverpool (Mayor)*, 3 D. & R. 275 ; *R. v. Middlessex J.J.*, 8 D. & R. 117 ;

R. v. Michaelstone Vedoes, 2 Nol. P. L. 558 ; *R. v. Sussex J.J.*, *id.*

(c) See Baines' Act, 12 & 13 Vict. c. 45, s. 11 ; Jervis' Acts, 20 & 21 Vict. c. 43, s. 2 ; see tit. "Special case."

which the superior court could bring within its jurisdiction for review the proceedings of the inferior court; *R. v. Cartworth*, 5 Q. B. 201; *R. v. Middlesex JJ.*, 8 D. & R. 117. And now that such a writ is no longer required in reference to special cases from quarter sessions, it necessarily follows that in *all* cases the sessions may now state a special case, and the enactments taking away the writ of certiorari will be of no effect; see *Clarke v. The Assistant Committee, Alderbury Union*, 50 L. J. M. C. 33.

Where
court below
acts with-
out juris-
diction.

But even in those cases where the certiorari was taken away by statute, still the court was not deprived of its inherent jurisdiction where the inferior court manifestly acted without jurisdiction. *R. v. The Sheffield Ry. Co.*, 11 A. & E. 194; *R. v. Boulton*, 4 A. & E. 498; *Baylis v. Strickland*, 1 M. & G. 596; *R. v. Fowler*, 1 A. & E. 836; *R. v. St. Albans JJ.*, 22 L. J. M. C. 142; *R. v. Somerset JJ.*, 5 B. & C. 816; *R. v. Berkeley*, 1 Lord Kenyon Rep. 99; *R. v. Derbyshire JJ.*, 2 *ib.* 209. The writ will also issue where the court has been illegally constituted; *R. v. The Cheltenham Commissioners*, 1 Q. B. 467; or a conviction has been obtained by fraud (*a*); *R. v. Gilliard*, 12 Q. B. 52; *Terry v. Newman*, 15 M. & W. 653; *The Colonial Bank of Australasia v. Willan*, 5 L. R. P. C. 417; 43 L. J. P. C. 39; 30 L. T. 237; 22 W. R. 516; see also *R. v. Gilliard*, 12 Q. B. 527; *Terry v. Newman*, 15 M. & W. 653; *Ex parte Bradlaugh*, 3 Q. B. D. 509.

When an
interested
justice
acts,

So also the writ will issue when justices interested in the decision have taken part in the proceedings. *R. v. The Cheltenham Commissioners*, 1 Q. B. 467; *R. v. The Sheffield Ry. Co.*, 11 A. & E. 194; *Case of Forham Tithing*, 2 Salk. 607. It is a fundamental rule that the party interested in a cause cannot be judge of it; *aliquis non debet esse judex in propria causa, quia non potest esse judex et pars*, Co. Litt. 141 a; *Great Charte v. Kennington*, 2 Str. 1173; *R. v. Yarpole*, 4 T. R. 71; *R. v. Guridge*, 5 B. & C. 459; *R. v. Great Yarmouth*, 6 B. & C. 646; *R. v. Surrey JJ.*, 21 L. J. M. C. 195. However small the pecuniary interest the justice should have in the matter in dispute it will disqualify him; but mere circumstances from some petty or trivial interest, from which a suspicion of favour may arise, will not be sufficient cause to disqualify the justice, on which certiorari

(*a*) As to the effect of fraud on judicial proceedings, see *R. v. Allegeue*, 4 E. & B. 186; *Shedden*

v. Patrick, 1 Macq. H. L. C. 535; *Eyre v. Smith*, 2 C. P. D. 435; 37 L. T. 417; 25 W. R. 871.

would be granted. *R. v. Rand*, L. R. 1 Q. B. 220; *R. v. Dean of Rochester*, 20 L. J. Q. B. 467; 35 L. J. M. C. 157; *Wakefield Local Board of Health v. The West Riding and Grimsby Ry.*, 35 L. J. M. C. 69; L. R. 1 Q. B. 84.

In some instances the statute gives special power to the justices, who may be interested in some degree, either as parties rated, or otherwise remotely benefited, in the matter of the appeal, jurisdiction to act in the appeal. But they must not be the parties instituting the proceedings appealed on. *R. v. Weymouth JJ.*, 48 L. J. M. C. 139; *R. v. Allen*, 33 L. J. M. C. 243 (a).

Where the objection goes only to a matter of form, as where the hearing was on an unreasonably short notice, or that there was no proof of summons, or no evidence of the facts charged, the justices otherwise having jurisdiction; *Ex parte Hopwood*, 15 Q. B. 121; or where the order of sessions does not make the costs payable to the clerk of the peace, but to the party directly interested, the certiorari will not be granted. *R. v. Binney*, 1 E. & B. 810; 22 L. J. M. C. 127.

By 13 Geo. 2, c. 18, s. 5, the writ must be moved or applied for within six months next after the conviction, judgment, order, or other proceeding to be removed into the superior court; and it must be proved on oath that the party suing for the same has given six days notice thereof in writing to the justice or justices, or to two of them (if so many there be), by or before whom the conviction, judgment, order, or other proceeding had been made, to the end that they might show cause against the issuing of the writ, or granting the certiorari. This section must be strictly followed in all cases where the certiorari is required, and where the necessity for the writ has not been removed by statute. The writ will not be granted pending an appeal. *R. v. Sparrow*, 2 T. R. 196; *Elliott v. Thompson*, 33 L. T. R. 339 (b).

Where court acts unreasonably.

Writ to be moved for within six months.

(a) The statutes referred to are 16 Geo. 2, c. 18, s. 1 & 2—settlement cases: *The Highway Act*, 1862, 25 & 26 Vict. c. 61, s. 38; 27 & 28 Vict. c. 101, s. 46; *The Union Assessment Act*, 1864, 27 & 28 Vict. c. 39, s. 6; *The Salmon Fishery Act*, 1865, 28 & 29 Vict. c. 121, s. 61; the 30 & 31 Vict. c. 115, s. 2, the justice being a municipal ratepayer (see *Wakefield Board of Health v. West Riding & Grimsby Ry. Co.*, 35 L. J. M. C. 69; L. R. 1 Q. B. 84;

The Gas Works Clauses Act, 1871, 34 & 35 Vict. c. 41, s. 46; *The Licensing Act*, 1872, 35 & 36 Vict. c. 94, s. 60; *The Public Health Act*, 1873, 38 & 39 Vict. c. 55, s. 258).

(b) As to trials of indictments, see *R. v. Pennegoes and Machgulleth*, 1 B. & C. 142; 16 & 17 Vict. c. 30, ss. 4—8; 24 & 25 Vict. c. 95. The 13 Geo. 2, c. 18, does not extend to indictments: *R. v. Battams*, 1 East 298.

When the six months dates from. The time of six months runs from the making the order of sessions in the appeal, and it becomes operative: *R. v. Middlesex*, 5 A. & E. 626; *R. v. Morice*, 1 N. Sess. Cas. 585. And from the day the order is made, and not from the first day of the sessions: *R. v. Abergele*, 5 A. & E. 795; see also *Elliot v. Thompson*, 33 L. T. 339; 24 W. R. 56, Q. B. D. The suing for the certiorari within the six months is imperative; *R. v. Cartworth*, 5 Q. B. 201; *R. v. Staffordshire JJ.*, 1 D. P. C. 484; *R. v. Sussex JJ.*, 1 M. & S. 631; *R. v. Bloxham*, 1 A. & E. 386. As to making the application on the last day of the six months, and no judge in town, see *R. v. St. Mary, Whitechapel*, 2 D. N. S. 964; *R. v. Hodgson*, 12 W. R. 424 (Cockburn, C. J.). When, however, the party prosecuting the writ was obliged to go to sea, which rendered him unable to enter into his recognizance, the court enlarged the time for the return of the writ: *Ex parte Tomlinson*, 20 L. T. 324. And where the writ had been allowed on an insufficient recognizance, the court quashed the allowance, and enlarged the return of the writ, sending it back to the sessions that it might be duly allowed after the parties had entered into the proper recognizance: *R. v. Abergele*, 5 A. & E. 795.

Six days' notice to justices. The service of the six days' notice in writing, of the intention to apply for the certiorari, must be made on the justices, or two of them (if so many there be), who were present and by whom the order, &c., was made. *R. v. Rattislaw*, 5 D. P. C. 539; *R. v. Cartworth*, 5 Q. B. 201; *R. v. Gilbertdike (Inks.)*, 5 Q. B. 207; *R. v. West Riding*, 1 N. Sess. Cas. 406. Where an interested justice has taken part in the judgment, see *R. v. Suffolk JJ.*, 21 L. J. M. C. 169. In boroughs the notice would be served on the Recorder as the sole judge; 5 & 6 Will. 4, c. 76, s. 105. The notice should state that it is given by the party prosecuting the writ, and state who he is: *R. v. How*, 11 A. & E. 159; *R. v. Cambridgeshire JJ.*, 3 B. & Ad. 887; *R. v. Lancashire JJ.*, 4 B. & A. 289. Signature by a solicitor, acting as solicitor for the applicant, is sufficient: *R. v. Solly*, 9 D. P. C. 115; *R. v. Wiltshire*, *ib.* 524; *R. v. Suffolk JJ.*, 21 L. J. M. C. 169; 18 Q. B. 416; *R. v. Abergele*, 5 A. & E. 795; *R. v. Lancashire*, 11 A. & E. 144; *R. v. Westmoreland*, 3 D. N. C. 178. As to a signature by the solicitor's clerk, see *R. v. Kent*, L. R. Q. B. 305; 42 L. J. M. C. 112; 21 W. R. 635. A signature by one churchwarden, "on behalf of the churchwardens and overseers of," &c., is not sufficient: *R. v. Cambridgeshire JJ.*, 3 B. & Ad. 887; *R. v. Lancashire*, 4 B. & A. 289; 11 A. & E. 144.

In computing the six days of notice of motion, one will be inclusive and the last exclusive: *R. v. West Riding*, 4 B. & Ad. 685; *R. v. Goodenough*, 2 A. & E. 463; and should the notice appear to be too short on the face of it, the fact that the motion was not made until after the six days will not cure the defect: *Re Flounders*, 4 A. & E. 865. The usual form of notice is to move "in six days from the giving of this notice, or as soon thereafter as counsel can be heard": *R. v. Rose*, 3 D. & L. 359. Without sufficient notice the court will quash the writ: *R. v. Nicholls*, 5 T. R. 280, n. The writ must be sued out by the party who gives the notice; it cannot be abandoned and taken up by another party: *R. v. Kent JJ.*, 3 B. & Ad. 250.

The affidavit on the motion should show that the party prosecuting is he who gave the notices to the justices: *R. v. Lancashire*, 4 B. & A. 289; *R. v. How*, 11 A. & E. 159. And that the persons served were justices of the county, &c., and that they were present when the order was made: *R. v. Cartworth*, 5 Q. B. 201. And that the order was made by or before them: *R. v. Darton*, 2 D. & L. 492. A subsequent affidavit will not cure the defect: *R. v. Gilberdike*, 5 Q. B. 207; nor the caption of the order: *R. v. St. James's, Colchester*, 20 L. J. M. C. 203. Where, however, the order of the sessions had been made *ex parte*, and the copy served on the opposite party stated the name of the justices in the caption, and the order was made on them, there would be *prima facie* evidence: *R. v. Sevenoaks*, 7 Q. B. 144.

The affidavits should be simply entitled, "*In the Queen's Bench Division*," *Ex parte Nohus*, 1 B. & C. 267. If entitled in any cause, the affidavits cannot be read: *Ex parte Wallwork*, 4 D. & L. 403; 10 Jur. 967; *R. v. Cheesemore*, 12 Jur. 11.

The certiorari may issue *ex parte* in vacation. A fiat of a judge in chambers may be granted in the first instance without a rule to show cause: *R. v. Newton Ferrers*, 9 Q. B. 32, overruling *R. v. Chipping Solbury*, 3 Nev. & M. 204.

The rule is absolute in the first instance in misdemeanours, and "*nisi*" in felonies: 8 Dowl. P. C. 127.

Where there is an immaterial variance between the conviction and the statement in the certiorari, see *R. v. Turk*, 10 Q. B. 540; 16 L. J. M. C. 114.

In the recent case, *Clarke v. the Assistant Committee of the Alderbury Union*, 50 L. J. M. C. 33, 35, the proceedings on a case stated from sessions after the Summary Jurisdiction Act, 1879, were held to be within the General Orders of

Computation of the six days.

Affidavit on motion.

How entitled.

Variance with conviction.

Costs.

1880, Order LXII. as to costs. Costs follow the event, see *Venables v. Hardman*, 1 Ell. & Ell. 79; but where points were raised on *both* sides, Lord Campbell, C. J., said, "the *certiorari* must be considered as having been prosecuted by both parties, and, consequently, neither would be entitled to costs." *R. v. the Southampton Dock Co.*, 17 Q. B. 83; 20 L. J. M. C. 228.

Practice
under Sum.
Juris. Act.
1879.

Since the Summary Jurisdiction Act, 1879, the whole practice for bringing up special cases from sessions is altered, and as yet no rules have been made to regulate the transmission of such special cases; but from the above case of *Clarke v. Alderbury Union*, it would seem that the clerk of the peace should transmit the case to the Crown office, when complete; the limit of time and the authorities bearing on the issuing of the writ within six months under the statute, 13 Geo. 2, c. 18, s. 5, will no longer avail.

Lodgment
of case.

Upon the lodgment of the case at the Crown Office, the following rules pursuant to 6 Vict. c. 20, will apply:—

By Cr. Off. N. R. r. 22, in all cases of *orders removed* into the Queen's Bench from *any inferior jurisdiction* the same shall be put into the *Crown paper* for argument upon a rule to show cause why such order should not be quashed. The rule *nisi* will be granted on counsel's signature to a motion paper entitled, "In the Queen's Bench. The Queen against —," (the party removing the order, who is now called the defendant). Notice of this rule must then be given to the *two justices*, and to the *opposite party* (who is now called the prosecutor). Although by Cr. Off. N. R. r. 22, in *all other cases* the conviction or other proceedings intended to be argued shall be put into the *Crown paper on a rule for a concilium*, which rule shall specify the day on which the case will be put into the paper for argument, and shall be drawn up and served *six days at least* before such day within forty miles of London and *eight days* in all other cases.

By Cr. Off. N. R. r. 23, the prosecutors are to *deliver a paper book of the proceedings*, together with a copy of the rule *nisi* to quash, to each of the two senior judges, and the other side to the other two judges, two days before the day on which the case will be put in the paper for argument. *On a special case from sessions* no points should be stated in the margin.

All the counsel in support of the order, i.e., showing cause against the rule, are heard *first*, and then *all the counsel* for the defendants in reply. If the order is quashed costs are seldom granted. If the order is confirmed the costs should

be taxed by the master at the Crown office, and an allocatur given upon a side bar rule.

For the service of the writ on justices, see *ante*, p. 15.

CHIMNEY-SWEEPER.

Any person allowing any child or person under twenty-one years of age to enter a chimney for the purpose of sweeping, cleaning or curing the same, or for extinguishing any fire therein, 3 & 4 Vict. c. 85, s. 2, will be subject under 27 & 28 Vict. c. 37, s. 9, to a penalty not exceeding £10, or in lieu thereof to six months' imprisonment; (see scale under Summary Jurisdiction Act, 1879, s. 5, *infra*). A licensed chimney-sweeper on conviction may have his certificate suspended for the residue of the year; see 38 & 39 Vict. c. 70, s. 20, "The Chimney-Sweepers Act, 1875." See the Chimney-Sweepers Regulation Acts, 1840, and 1864.

An appeal is allowed under 3 & 4 Vict. c. 85, s. 11, to the person aggrieved against a conviction to the next court of quarter sessions to be held not less than twelve days after the day of the conviction for the jurisdiction wherein the conviction or cause of complaint arose. Notice in writing of such appeal is to be given to the complainant, and of the cause and matter thereof, within three days after the conviction, and seven clear days at least before such sessions. The defendant will remain in custody or enter into recognizance with two sureties conditioned to personally appear at the sessions and try the appeal; and the Court, "in case of the dismissal of the appeal or affirmation of the conviction, shall order and adjudge the offender to be punished according to the conviction," and to pay the costs. This section also applies to convictions under 27 & 28 Vict. c. 37. See also the proceeding on appeal against convictions under the Summary Jurisdiction Act, 1879, ss. 31, 32, *infra*, and under which the appellant may elect to appeal.

CHURCH.

Under 23 & 24 Vict. c. 32, s. 2, any person guilty of riotous, violent, or indecent behaviour in any cathedral, church, or chapel of the Church of England, or in any place of religious worship duly certified under the 18 & 19 Vict. c. 81,

whether during divine service or at any other time, or in any churchyard, or burial ground ; or who shall molest, let, disturb, vex or trouble, or by any other unlawful means disquiet or misuse any preacher duly authorized to preach therein, or any clergyman in holy orders ministering or celebrating the sacrament, or any divine service, rite or office in any cathedral, church, or chapel ; or in any churchyard or burial ground, will be liable to a penalty not more than £5, or imprisonment not exceeding two calendar months. (See scale under Summary Jurisdiction Act, *infra*.) The information must be laid within six months: 11 & 12 Vict. c. 43, s. 11.

An appeal is given (sec. 4) to the person so convicted in the same words as in the 3 & 4 Vict. c. 85, s. 11, in relation to chimney sweepers (see *ante*) ; and see also (*infra*) Summary Jurisdiction Act, 1879, ss. 31 and 32, under which he may elect to appeal.

It has been held that the interrupting a *clergyman* collecting alms of the congregation during a communion service is not within the protection of the Act. *Cope v. Barber and others*, 41 L. J. M. C. 137. It would seem to be the duty of the churchwarden to make the collection. See *Hutchings v. Denziloe*, 1 Hagg. Cons. 170 ; see also *Burton v. Henson*, 11 M. & W. 105 ; 11 L. J. Exch. 348 ; *Worth v. Terrington*, 13 M. & W. 781 ; 14 L. J. Exch. 133. See also 1 Mary, sess. 2, c. 3, s. 7 ; 1 Eliz. c. 2 ; 1 W. & M. c. 18, s. 15 ; Ruffhead, 1 W. & M. sess. 1, c. 18, s. 18.

COMMONS INCLOSURE ACT.

8 & 9 Vict. c. 118.

Discontinu-
ance and
stopping
up high-
ways.

Under sec. 62, 8 & 9 Vict. c. 118, before the valuer, acting in the matter of any inclosure, shall proceed to make, set out or widen any public roads and ways in or over any lands to be inclosed, and stop up, divert, or alter any of the roads or ways passing through the land to be inclosed, or through any old inclosures in the parish or respective parishes in which the land to be inclosed is situate (and the soil of such roads and ways so to be discontinued and stopped up as pass through the lands to be inclosed shall be deemed part of the lands to be inclosed), the valuer shall cause to be affixed at each end of such road or way a notice (under his hand, sec. 162,) to the effect that the same is intended to be discontinued, stopped up, diverted or altered, as the case may

be, from and after a day to be mentioned in the notice. The valuer is also to advertise the same notice for four successive weeks (which advertisement, by sec. 162, is to be in some newspaper printed and usually circulated in the county in which the land to which it relates is situate), and also on the church-door on the four Sundays of the same successive weeks (which by sec. 162, is to be done by affixing the same on the principal outer door of the church of every parish and ecclesiastical district in which the land subject to be inclosed or other land to which such notice may relate or any part thereof may be situate, on Sunday before divine service: and when there is no such church, then the notice is to be affixed in some conspicuous place in the parish or ecclesiastical district on Sunday before ten o'clock in the forenoon). And after such notices shall have been so given, such road or way will, from the day mentioned in the notice, be deemed to be discontinued, stopped up, diverted or altered, subject however to the right of appeal under sec. 63.

By sec. 63, any person, within four months after the first Sunday on which such notice shall have been given on the church-door, in accordance with sec. 62, may make his appeal to the Court of Quarter Sessions for the county, riding, division, or other jurisdiction in which such road or way, or the greater part thereof shall be situate, upon giving the valuer fourteen days' notice in writing of such appeal, together with a statement in writing of the grounds thereof; and it will not be lawful for the appellant to be heard in support of his appeal, unless such notice and statement shall have been so given; nor will he be allowed to give evidence of any other grounds of appeal than those set forth in such statement.

The fourteen days' notice will be one day inclusive, and one day exclusive: *R. v. Yorkshire JJ.*, 2 B. & C. 228; 4 B. & Ad. 685; *R. v. Bucks JJ.*, 2 M. & S. 230; *R. v. Gloucester JJ.*, 3 *ib.* 127.

The appeal need not necessarily be heard within the four months: *R. v. Essex*, 34 L. J. M. C. 41. But should be made within the limited time: *R. v. Wilts JJ.*, 13 East, 352; *R. v. Dean Inclosure*, 2 M. & S. 80. The sessions are bound to receive the appeal, but not to respite after the limitation has expired: *R. v. Derby*, 4 T. R. 488.

In case of such appeal, the matter at issue will be tried by the verdict of a jury, under sec. 647; and the issue will be whether the road or way in question is unnecessary, or may, beneficially to the public, be discontinued, stopped up,

diverted, or altered, and would the party appealing be injured or aggrieved thereby; and on a verdict against the appeal, the court will dismiss the appeal, and award the costs of resisting the appeal to be paid by the appellant to the valuer. But should the jury return a verdict in favour of the appellant, the appeal shall be allowed with costs. Where the surveyor of highways is the appellant, under the direction of the vestry (now the local authority, Public Health Act, 1875, s. 144), the cost of prosecuting the appeal will be paid out of the highway rate.

Certificate of completion to be filed at Quarter Sessions.

As soon as two justices have certified that such public roads have been sufficiently formed and completed, they will thenceforth be kept in repair as public roads; and every such certificate shall, at the quarter sessions to be held for jurisdiction (a) in which the road is situate, next after the date of the certificate, be filed of record by the clerk of the peace.

Proceedings conclusive.

Where the highway has been stopped up or altered under the above sections, the proceedings are conclusive. The only remedy to a party aggrieved is by his right of appeal: *Gwyn v. Hardwicke*, 25 L. J. M. C. 97.

Exception.

But where there had existed a right to take water from an ancient well, that right was held not extinguished by the extinction of the right of way to it: *Race v. Ward*, 26 L. J. Q. B. 133.

COMPANIES CONSOLIDATED CLAUSES ACTS.

Commissioners Clauses Act, 1847.

Any overseers, rate collectors, &c., neglecting to attend the commissioners at the elections, with the rate-books, or other documents (and for which purpose the returning officer may summon them), to test the qualification of the voters, will be liable to a penalty of not more than £20, 10 & 11 Vict. c. 16, s. 27; or imprisonment under the scale in the Summary Jurisdiction Act, 1879: *infra*, tit. "Summary Jurisdiction Act."

The information is to be made within six months: 8 & 9 Vict. c. 20, s. 151.

As to the appeal on a conviction in the metropolitan district, see sec. 106 of 10 & 11 Vict. c. 16.

(a) In the Highway Acts "limit" is used in the place of jurisdiction, see *post*, "Highway

Acts," where the definition of "limit" is discussed.

Appeal Clauses.

The Companies Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 16, s. 159 ; the Lands Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 18, s. 146 ; the Railway Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 20, s. 60, applying to an appeal against the consent of justices to the making a level crossing over a highway, other than a public carriage-way ; and sec. 157, to an appeal against a conviction for penalties and forfeitures, are each in the following form :—

If any party shall feel himself aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incorporate therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen ; and no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless the ten days' (a) notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice conditioned duly to prosecute such appeal and to abide the order of the court thereon.

The following statutes are incorporated with one or other of the above Acts, and to which the appellate section applies :—

The Markets and Fairs Act, 1847,	10 & 11 Vict. c. 14, s. 52.
The Gas Act, 1847	„ „ c. 15, s. 40.
The Commissioners Act, 1847	„ „ c. 16, s. 104.
The Water Works Act, 1847	„ „ c. 17, s. 85.
The Harbour, Dock and Piers Act, 1847	„ „ c. 27, s. 92.
The Towns Improvement Act, 1847	„ „ c. 34, s. 210.
The Cemeteries Act, 1847	„ „ c. 65, s. 62.
The Towns Police Act, 1847	„ „ c. 89, s. 73.

(a) The fourteen days' notice under Baines' Act will not here apply as in *R. v. Maule*, 41 L. J. M. C. 47 ; 23 L. T. 859, the

appeal being in reference to a conviction ; see tit. " Sum. Juris. Act " ; Baines' Act, s. 2.

CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875.

38 & 39 Vict. c. 86.

Amend-
ment as to
trade dis-
putes.

Under this Act, by sec. 3, an agreement or combination by two or more persons to do or procure an act to be done in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy, if such act committed by one person would not be punishable as a crime.

Where a person is convicted of any such agreement or combination to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the same act when committed by one person.

Breach of
contract
by person
employed
in supply
of gas or
water.

Where a person employed by a municipal authority, or a company or contractor on whom is imposed by Parliament the duty of supplying any city, borough, town or place with gas or water, wilfully and maliciously breaks his contract of service with his employer, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, &c., or part, wholly or to a great extent of their supply of gas or water, he shall on conviction by a court of summary jurisdiction or on indictment be liable to pay a penalty not exceeding £20, or to imprisonment for not exceeding three months with or without hard labour. (Sec. 4.)

Breach of
contract
involving
injury to
life or pro-
perty.

A copy of sec. 4 is to be posted (*a*) up at the gas or water works where it can be conveniently read by those employed on the works: on the failure to do so the authority will be liable to a penalty not exceeding £5 a day during the continuance of the default (*ib*).

Where by such breach of contract the employer knows, or has reasonable cause for believing, that the probable consequence will be to endanger life, or cause serious bodily injury, or to expose valuable property, real or personal, to destruction, or serious injury, he will be liable on conviction before

(*a*) Any person defacing this notice will be subject to a penalty of 40s.

a court of summary jurisdiction, or by indictment, to a penalty not exceeding £20, or to three months' imprisonment with or without hard labour (sec. 5).

Where a master, legally liable to provide for his servant or apprentice necessary food, clothing, medical aid or lodging, wilfully and without lawful excuse, refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he will be liable on summary conviction to a penalty of not exceeding £20, or to be imprisoned for not exceeding six months, with or without hard labour (sec. 6).

Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority;—

1. Uses violence to or intimidates such other person, or his wife or children, or injures his property; or

2. Persistently follows such other person about from place to place; or

3. Hides any tools, clothes, or other property owned or used by such other person, or deprives him of the use thereof; or

4. Watches or besets the house or other place where such other person resides or works, or carries on business, or happens to be, or the approach to such house or place; or

5. Follows such other person with two or more other persons in a disorderly manner in or through any street or road;

Shall, on conviction by a court of summary jurisdiction, or on indictment, be liable either to pay a penalty not exceeding £20, or to be imprisoned for a term not exceeding three months, with or without hard labour.

The attending near the house, &c., in order to obtain or communicate information is not "a watching or besetting" within the section (sec. 7).

Where a pecuniary penalty is imposed under any other Act relating to employers and workmen, such penalty may be reduced to any sum not less than one-fourth of the penalty imposed by the Act (sec. 8).

Where a person is charged under this Act with an offence punishable with a penalty amounting to £20, or imprisonment, he may object to be tried by a Court of Summary Jurisdiction, and the court may then deal with the case as if it were an indictable offence (sec. 9).

Sec. 12 gives the right of appeal to a party aggrieved to Appeal.

the Quarter Sessions, for the jurisdiction in which the cause of appeal arises, holden not less than fifteen days, and not more than four months after the decision from which the appeal is made.

Within seven days after the cause of appeal has arisen, notice of appeal with the grounds must be given to the other party and to the Court of Summary Jurisdiction. See *Curtis v. Buss* S. C. *Ex p. Curtis*, 3 Q. B. D. 13 ; 47 L. J. M. C. 35, as to the service of the notice of appeal *personally* on the justices ; *ante*, pp. 73, 122.

Immediately after such notice the appellant must enter into his recognizance to try his appeal, on which if in custody he will be released.

The appeal may be adjourned, and on the hearing the court may confirm, reverse, or modify the decision of the Court of Summary Jurisdiction or the case may be remitted to the court below with the opinion of the Court of Appeal thereon ; or the court may make such other order as the Court of Appeal may think just. If the matter be remitted to the Court of Summary Jurisdiction, that court shall thereupon rehear and decide the information in accordance with the opinion of the Court of Appeal.

See sec. 32 of the Summary Jurisdiction Act, giving the parties the optional right to appeal under either Act. Tit. "Summary Jurisdiction Acts" (*infra*).

CONSTABLE.

High Constable.

The ancient office of high constable mentioned in the stat. of Winton, 13 Ed. 1, st. 2, c. 16, was of great importance. He was appointed by the sheriff at his court, the Tourn (4 Inst. 265), unless there was a feudal lord who held a court leet.

In some instances the office was held for life, and in virtue of it he was collector of the county rate, in which case the sessions could require him to find security. In *re Lodge*, 2 A. & E. 123 : and see 15 & 16 Vict. c. 81, s. 37.

By 32 & 33 Vict. c. 47, the High Constables Act 1869, s. 2, the sessions were empowered to discontinue the office on any

vacancy, excepting where the high constable was the returning officer for a parliamentary or municipal election. And upon such vacancy and abolition, the duty of collecting the rates is transferred to the Poor Law Guardians; *ib. ss. 25, 36.*

The previous statute 7 & 8 Vict. c. 33 provided that upon a vacancy occurring in the office by the expiration of his appointment or otherwise, the guardians of the union were made the collectors of the county rate, police rate, or other rate in the nature of the county rate. This was repealed as to county rates by 24 & 25 Vict. c. 104, but the enactment now in force, 15 & 16 Vict. c. 81, ss. 25, 36, contains a similar provision for transferring the collection to the guardians.

7 & 8 Vict. c. 33 is now for all purposes repealed by 32 & 33 Vict. c. 47, s. 4 (The High Constables Act, 1869), and the chief constable, or other acting chief officer of police for the time being of the county in which the hundred is situate, is substituted for the high constable.

Constable (Parish).

Under 5 Geo. 4, c. 83, an Act for the punishment of idle and disorderly persons and rogues and vagabonds, a constable who refuses or wilfully neglects to take a person offending under the Act as a rogue and vagabond, or who shall not use his best endeavours to apprehend and convey before some justice any person he shall find so offending, will be deemed to have neglected his duty, and be liable to a penalty for any such offence not exceeding £5, or imprisonment not exceeding three months (*sec. 6*). Parish constables neglecting duty.

Section 14 gives the right of appeal to any person aggrieved by any act, or determination of any justice *out of sessions* concerning the act, to the next court of quarter sessions, for the jurisdiction in which such justice shall have acted, on giving to the justice or justices whose act or determination shall be appealed against notice in writing of such appeal and the grounds thereof within seven days *after* such act or determination, and *before* the next general or quarter sessions, and entering within "*such*" seven days (*a*) into a recognizance with sufficient security personally to appear and Appeal.

(*a*) The last antecedent "seven days" is here those *before* the session; but it is presumed that

the usual time is intended as within the seven days *after* the determination appealed on.

prosecute such appeal. And on the hearing the court shall make such order as may seem meet, and may issue the necessary powers for the apprehension and punishment of the offender.

Constable
bound to
act where
husband
neglects his
family.

See also the appeal clauses, 31 & 32, in the Summary Jurisdiction Act, 1879 (*infra*). 5 Geo. 4, c. 83, ss. 3 & 6, make it an offence as a vagrant for a man to neglect the maintaining his family. But the constable is not bound to arrest him as "found offending against the Act" without a warrant; his guilt or innocence might depend on a variety of circumstances not apparent to the eye; see *Horley v. Rogers*, 29 L. J. M. C. 140; 2 L. T. N. S. 171.

CONVICTS.

A convict holder of a licence (or ticket-of leave) not producing his licence when required may be subject to not exceeding three months' imprisonment, with or without hard labour; 27 & 28 Vict. c. 47, s. 5. So if he breaks the condition of his licence; 34 & 35 Vict. c. 112 (Prevention of Crimes Act, 1871), s. 4; or does not report himself to the police after he has been in a place for forty-eight hours, the like imprisonment for twelve months, sec. 5; and as to special offences committed by persons after being twice convicted of crimes, see sec. 7. For the appeal, see the Sum. Juris. Act, 1879, secs. 19, 31. As to procedure before the Court of Sum. Juris., see 34 & 35 Vict. c. 112, s. 17.

CRIMINAL LAW.

The Larceny Act, 24 & 25 Vict. c. 96 ; the Malicious Injury to Property Act, 24 & 25 Vict. c. 97.

The appeal clauses in the two above acts are alike in words, and are here set out independently of a statement of the numerous offences under the acts, which form the major part of Archbald's Criminal Practice, and to which reference is made. The appeal clauses, sec 110 of c. 96, and sec. 68 of c. 97, are not in that work, and are to the following effect :—

In all cases where the sum adjudged to be paid on any summary conviction shall exceed £5, or the imprisonment shall exceed one month, or the conviction shall take place before one justice only, any person who shall think himself aggrieved by any such conviction may appeal to the next [practicable,] court of general or quarter sessions, holden not less than twelve days after the day of such conviction, for the county or place wherein the cause of complaint shall have arisen ; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at least before such sessions, and shall either remain in custody or enter into a recognizance with two sureties to appear and try such appeal, and abide the judgment of the court, and pay the costs, or make a deposit of money.

The court will hear and determine the appeal, and on the affirmation of the conviction the court *shall* order the offender to be punished according to the conviction, and pay the cost awarded, or issue process if necessary. Any balance of money deposited by the convicted party will be repaid to him. Where the conviction is quashed, the clerk of the peace shall forthwith endorse the same on the conviction ; and a copy of such memorandum added to the copy conviction will be sufficient evidence thereof. See also Sum. Juris. Act 1879, s. 32.

Appeal
clauses.

24 & 25
Vict. c. 96,
s. 110 ; c.
97, s. 68.

Sum.
Juris. Act
1879, s.
32.

COSTS.

By statute only. The sessions have no general power at common law to award costs. The power is given by the various statutes.

3 & 9 Will. 3, c. 30. The 8 & 9 Will. 3, c. 30, was passed "for the more effectual prevention of vexatious removals and frivolous appeals," and sec. 3 enacts "that the justices of the peace of any county or riding, in their general or quarter sessions of the peace upon any appeal before them to be had concerning the settlement of any poor person, or of any proof before them, there to be made, of notice of any such appeal to have been given by the proper officer to the churchwarden or overseers of the poor of any parish or place (though they did not afterwards prosecute such appeal) shall at the same quarter sessions award and order to the party, for whom and in whose behalf such appeal shall be *determined*, or to whom such notice did appear to have been given, as aforesaid, such costs and charges in the law as by the said justices in *their discretion* (a) shall be thought most reasonable and just, to be paid by the churchwardens, overseers of the poor, or other person against whom such appeal shall be determined, or by the person that did give such notice as aforesaid."

4 & 5 Will. 4, c. 76. By 4 & 5 Will. 4, c. 76, s. 82, the court may order and direct, if they think fit, the *parish* (b), against whom an appeal shall be decided, to pay to the other such costs and charges as may appear just and reasonable, and shall certify the amount thereof; and if the overseers of the parish liable to pay the same, upon demand and upon the production of such certificate, shall refuse or neglect to pay the same: the amount may be recovered from such overseers in like manner as any penalties are recoverable under Jervis's Act, p. 203.

And by sec. 83, where either of the parties have included in the order or statement any grounds of *removal* or *appeal*, which shall in the opinion of the justices be frivolous or

(a) See *R. v. Glamorganshire J.L.*, 19 L. J. M. C. 172 (per Coleridge, J.), the sessions when acting on a fixed rule for all cases to allow no more than 40s. costs do not necessarily exercise a discretion in only allowing the 40s.; and a mandamus will go to them to consider what *reasonable* costs should be granted: *R. v. Nottingham*, N. S. C. 422; see

infra, p. 153.

(b) See 39 & 40 Viet. c. 61, s. 25, under which the guardians of a parish, when authorised by the L. G. B., may apply for or defend appeals against orders of removals, with the like powers and subject to the like liabilities as guardians of a union are subject to in respect of such orders.

vexatious, such party shall be liable, at the discretion (a) of the court, to pay the whole or any part of the costs incurred by the other party in disputing any such grounds, such costs to be recovered as penalties under Jervis's Act, p. 203.

Baines' Act (12 & 13 Vict. c. 45), s. 5, enacts that "upon *any* appeal to any court of general or quarter sessions of the peace, the court before whom the same shall be brought may, if it think fit, order and direct the party or parties against whom the same shall be decided to pay to the other party or parties such costs and charges as may to such court appear just and reasonable, such costs to be recoverable in the manner provided for the recovery of costs upon an appeal against an order or conviction" (b). And, for more effectual prevention of frivolous appeals, sec. 6 enacts, "that any court of general or quarter sessions of the peace, upon proof of notice of any appeal to the same court having been given to the party or parties entitled to receive the same, though such appeal was not afterwards prosecuted or entered, may, if it so think fit, at the same sessions for which such notice was given, order to the party or parties receiving the same such costs and charges as by the said court shall be thought reasonable and just to be paid by the party or parties giving such notice, such costs to be recoverable in the manner last aforesaid."

Baines' Act, 12 & 13 Vict. c. 45, s. 5. General application.

Frivolous appeals.

Although the Justices may be the formal parties as respondents in an appeal, the "party" mentioned in sec. 5 means the informant at whose instance the complaint has been made: *R. v. Smith*, 29 L. J. M. C. 216; *R. v. Hants JJ.*, 1 B. & Ad. 659; although the informant may not have appeared to support the conviction: *R. v. Purdey*, 34 L. J. M. C. 4. The same decision was held on an appeal on a conviction under the Criminal Law Amendment Act, 34 & 35 Vict. c. 32, s. 3. So the real prosecutor is entitled to his costs though his name may not be on the indictment: *R. v. Sharpness*, 2 T. R. 47; *R. v. Kettleworth*, 5 T. R. 33. See also *R. v. Cook*, 1 F. & F. 389; *R. v. Yates*, 7 Cox, C. C. 363. As to the substantial respondent in an appeal on an order of removal, see *R. v. Chatham*, 17 L. J. M. C. 262; 12 Q. B. 300. See this case, tit. "Appeal," p. 114.

The real and not nominal respondent the party to the appeal.

A surveyor of a local board of health who has laid the information is not liable for costs, but the local board is: *R. v. Davidson*, 24 L. J. M. C. 22. An order for payment of

(a) *R. v. Glamorganshire JJ.*,
sup.

(b) This has reference to 11 & 12 Vict. c. 43, s. 27; post, p. 203.

costs cannot be made against the convicting justices: *R. v. Goodall*, L. R. 9 Q. B. 557.

The Court's implied jurisdiction to give costs by act of appellant.

Where a party brings himself before the court he impliedly submits himself to its jurisdiction for costs: *Peters v. Sheehan*, 1 M. & W. 213; 12 L. J. Ex. 177; and per Mellor, J., appellants should be compelled to pay costs who improperly set the law in motion: *The G. N. & N. W. Committee v. Inett*, 46 L. J. M. C. 237; 2 Q. B. D. 284. So where an appeal against the accounts of the surveyors of highways was dismissed by the sessions, they having no jurisdiction to hear the appeal, the Queen's Bench upheld an order made on the appellants to pay costs to the respondents: *R. v. Padwick*, 27 L. J. M. C. 113. So also where a party appeals without the real grievance having arisen, he may be liable to pay costs; as where an appeal is made on an order of removal where there was no due service of the notice of chargeability, and without which the order was a nullity: see *R. v. Shrewsbury (Recorder)*, 22 L. J. M. C. 98; 1 E. & B. 711; (overruling *R. v. Bisham*, 8 A. & E. 375; 7 L. J. M. C. 78); see *R. v. Birmingham*, 44 L. J. M. C. 48.

So also where an appeal is made under the Union Assessment Act, whilst the Assessment Committee await deciding on the rate pending a case on the point before them for hearing in the Q. B. *R. v. Bedminster*, 45 L. J. M. C. 117; L. R. 1 Q. B. D. 503.

Appeal to wrong sessions.

Where the appellants give notice of appeal to the wrong sessions, the respondents may go to those sessions and obtain an order for costs (a) *R. v. Leeds (Recorder)*, 30 L. J. M. C. 86; see *R. v. Liverpool (Recorder)*, 15 Q. B. 1070; *R. v. Merionethshire*, 1 Car. H. & A. 277; *R. v. Buckinghamshire*, 4 E. & B. 259, (n.).

Where the appellant abandons the appeal, without paying or tendering to the respondents costs to the amount they would be taxed, the respondent may apply for and obtain an order for costs. *R. v. Townstal*, and *R. v. Stayley*, 3 Q. B. 357.

On abandonment of the appeal.

On the abandonment (see 11 & 12 Vict. c. 31, s. 8) of the appeal on an order of removal, although the sessions may make an order for the costs (b) they have no jurisdiction over the settlement; and if an order be made adjudging the

(a) If the appellant has tried his appeal at a wrong sessions he will not be allowed, on its being dismissed on the ground of no jurisdiction, to treat the trial as surplusage, and proceed to the

proper sessions: *R. v. Sa'op JJ.*, 4 E. & B. 257; 24 L. J. M. C. 14.

(b) An order for costs may be made where the case is dismissed on a mere informality: *R. v. Cottingham*, 2 Ad. & Ell. 250.

settlement *mandamus* will be adjudged for the erasing the record of the entry of the appeal. *R. v. Yorkshire W. R.*, 5 Q. B. 1; 12 L. J. M. C. 148. It was held, in *R. v. Stoke Bliss*, 6 Q. B. 158; 13 L. J. M. C. 151, that an order for the costs, being ancillary to the order of confirmation, could not be enforced as the order was entire, and not divisible; and being bad in part was bad *in toto*. [See next case.]

But, however, in *R. v. Over*, 19 L. J. M. C. 57; 14 Q. B. 425; 4 New S. C. 77, the court refused to quash the order for costs which also confirmed the order appealed on. For, although it was an excess of jurisdiction, the bad part could be severed from the good leaving the residue standing, as the rights of the parties were not, in fact, affected thereby, and the costs would have been the same had the appeal been dismissed with costs. See also *per Erle, J.*, *R. v. Green*, 20 L. J. M. C. 168; and see *R. v. Hants*, 32 L. J. M. C. 46; *R. v. All Saints', Newcastle*, 1 G. & D. 133.

In an appeal on a conviction the judgment is *entire* and indivisible. Paley on Convictions, 6th Ed., p. 172, *R. v. Hale*, Cowp. 728; *R. v. Catherall*, 2 Str. 900.

The respondent is entitled to his costs on the appellant giving notice of countermand, although there may be a rule of sessions to the contrary. *R. v. Montgomery*, 19 L. T. M. C. 397; and an order of sessions that costs shall follow the event, unless an order is made to the contrary, is good, *Freeman v. Read*, 30 L. J. M. C. 123; but a rule fixing the amount in each case, irrespective of the merits and without the sessions exercising "a discretion" in the matter as directed by sec. 5 of 8 & 9 Will. 3, c. 30, will not be upheld by the court. *R. v. Merionethshire JJ.*, 6 Q. B. 343; *R. v. Glamorganshire JJ.*, 19 L. J. M. C. 172, *ante* p. 198 n. (a).

The fair amount of costs is in the discretion of the sessions, and when that has been exercised the court of Q. B. will not interfere. *R. v. Nottingham JJ.*, 1 N. S. C. 422.

On an appeal under the Highway Act, 5 & 6 Will. 4, c. 50, s. 88, the sessions are "authorised and required" under sec. 90, "to award to the party, giving or receiving notice of appeal, such costs and expenses as shall be incurred in prosecuting or resisting such appeal, whether the same be tried or not; and such costs and expenses shall be paid by the surveyor or other party at whose instance the notice for diverting, &c. the highway shall have been given; and if the said surveyor or other party shall not appear in support thereof, the court of Q. S. shall award the costs of the

Judgment on a settlement appeal,

not entire.

Entire on conviction.

Respondent entitled to costs, although a rule of sessions *contra*.

Under Highway Act, 1835, sessions no discretion but to allow costs.

appellant to be paid by such surveyor or other party, and such costs shall be recoverable in the same manner as any penalties under this Act." Under this section the sessions have no discretion as to costs; the granting the order for the costs is imperative; and the application for them may be made during the sessions, after the appeal has been struck out, on the non-appearance of the respondent to support the order. *R. v. Yorkshire W. R.*, 31 L. J. M. C. 271; 2 B. & S. 811; see *R. v. Hants*, 1 B. & Ad. 654.

At what sessions. The order for costs must be made at the same sessions at which the appeal is decided. See *R. v. Clerk*, 5 Q. B. 887, 893.

The order must state amount of cost. No power to delegate authority. Although in practice the clerk of the peace taxes the costs, the sessions have no power to delegate their authority to him; the order itself should state the amount of the costs allowed. See *R. v. Sweet*, 9 East, 25; *Sellwood v. Mount*, 1 Q. B. 726; *R. v. Long*, *ib.* 740. Both parties should be present on the taxation. *R. v. Morlock*, 7 Q. B. 471.

An order awarding such costs as may be thought reasonable by the clerk of the peace, or by other persons (as by two solicitors), is bad. *R. v. St. Mary's, Nottingham*, 15 East, 57, note; *R. v. Skinn*, E. T. 15, G. 2, MS. cited in *R. v. Sweet*, 9 East, 27.

Taxation out of sessions. Assenting to jurisdiction. If the party against whom costs are awarded consents to the taxation taking place "out of sessions," the justices will give judgment *nunc pro tunc*, and no objection can be made to the jurisdiction. *R. v. Shrewsbury and Hereford Railway Co.*, 25 L. T. 65; *R. v. Long (sup.)*, referred to by Erle, C. J., in *Freeman v. Read*, 30 L. J. M. C. 128. And in *ex parte Wilkins*, 5 L. T. 605. As to the taxation of costs "out of sessions" on a reference, see tit. "Arbitration." *The Southampton Gas Light Co. v. The Southampton Union*, 46 L. J. M. C. 238. Where the party attended the taxation after the sessions without any protest, he was held to have assented to the jurisdiction.

Under the Licensing Act, 1829. On an appeal under 9 Geo. 4 c. 61, s. 27 (The Licensing Act, 1829), the sessions dismissed the appeal with costs. After the court had risen the clerk of the peace taxed the costs under protest of the appellant. The sessions adjourned, and before the day of the adjournment the costs were certified, and the amount inserted in the order of sessions. In the absence of any statement to the contrary, the court will presume the order was rightly made; and that there appeared to be a sufficient adoption of the taxation by the adjourned sessions, although no mention of the amount

was made in court. *R. v. Phillips*, 20 L. T. R. 100, Q. B.

By 11 & 12 Vict. c. 43, s. 27 (Jervis's Act), it is enacted that after an appeal against any conviction or order within the Act shall be decided, if the same shall be decided in favour of the respondents, the justice or justices who made such conviction or order or any other justice of the peace of the same county, riding, division, liberty, city, borough or place may issue a warrant of distress or commitment for execution of the same as if no such appeal had been brought, and if upon any such appeal the Court of Quarter Sessions shall order either party to pay costs, such order shall direct such costs to be paid to the clerk of the peace of such court to be by him paid over to the party entitled to the same, and shall state within what time such costs shall be paid, and if the same shall not be paid within the time so limited, and the party ordered to pay the same shall not be bound by any recognizances conditioned to pay such costs, such clerk of the peace or his deputy, upon application of the party entitled to such costs or of any person on his behalf, and on payment of a fee of one shilling, shall grant to the party so applying a certificate that such costs have not been paid, and upon production of such certificate to any justice or justices of the peace for the same county, &c., it shall be lawful for him or them to enforce the payment of such costs by warrant of distress, and in default of distress he or they may commit the party against whom such warrant shall have issued for any time not exceeding three calendar months, unless the amount of such costs, and all costs and charges of the distress, and also the costs of the commitment and conveying of the said party to prison, if such justice or justices shall think fit so to order (the amount thereof being ascertained and stated in such commitment) shall be sooner paid.

Notwithstanding the words in the 5th section of Baines' Act, that the costs are to be paid "to the other party," the order must direct them to be paid to the clerk of the peace as directed under Jervis's Act, sec. 27. *Gay v. Matthews*, 4 B. & S. 425, 440; 33 L. J. M. C. 14; see also *R. v. Huntley* (under 17 Geo. 2, c. 38), 3 E. & B. 172; 23 L. J. M. C. 106; *R. v. Ely JJ.* (under 9 Geo. 4, c. 61), 5 E. & B. 419; 25 L. J. M. C. 1.

In *Gay v. Matthews*, the form of order was: "And this court doth order and direct the said appellant A. G. to pay the sum of £20 for costs to the clerk of the peace of this court to be by him paid over to the parties entitled to the

Jervis's
Act, 11 &
12 Vict. c.
43, s. 27.

Recovery
of costs.

Payment
to clerk of
the peace.

Distress.

Order for
costs to be
paid to the
Clerk of the
Peace, and
not to the
party.

same, within three weeks after service of this order, or a copy thereof, upon the said A. G.

J. S., Clerk of the Peace.

By the Court.

Imperfect
order may
be set aside
on motion.

If the order is not so made, it will be an irregularity, and on the other party making it a rule of court for enforcement (12 & 13 Vict. c. 45, s. 18), it may be set aside. *R. v. Hillier*, 17 Q. B. 220; 21 L. J. M. C. 3.

Where the statute had taken away the certiorari, the court refused to set aside an order making the amount of costs payable to the *other* party, instead of to the clerk of the peace, as not being an order made without jurisdiction, but only an "erroneous procedure." *R. v. Binney*, 1 E. & B. 810; 22 L. J. M. C. 127. See *ante*, p. 182.

Enforcing
orders
under
12 & 13
Vict. c. 45.
Baines'
Act.

An order for the payment of costs may be enforced under 12 & 13 Vict. c. 45, s. 18, by application to the Court of Queen's Bench, or to any judge of that Court at Chambers either in term or vacation, by any person entitled to enforce such order, and upon the production of a copy of such order under the hand of the Clerk of the Peace, or his deputy, and upon proof of refusal or neglect to obey such order, such Court or judge may order the proceedings to be removed into the Court to be enforced as a rule of Court, and all reasonable costs attending the application will become and be recoverable as part of the order. This order is removable without a writ of certiorari. *Hawker v. Field*, 1 L. M. & P. 606 and note; 20 L. J. M. C. 41; also *R. v. Gamble*, 16 M. & W. 384.

Baines'
Act only
applies
to appeals.

This statute applies only to cases of appeal. It does not apply to an order to abate a nuisance, which order could be enforced by the sheriff. *R. v. Bateman*, 27 L. J. M. C. 95. For enforcing the recovery of the costs they are within the second exception of s. 4 of the Debtors Act, 1869, and may be enforced by commitment and imprisonment where the party against whom the order is made is not bound by recognisance to pay the costs. *R. v. Pratt*, L. R. 5 Q. B. 176; 39 L. J. M. C. 73.

See tit. "Arbitration" as to Costs on a reference.

COUNTY RATES.

15 & 16 Vict. c. 81.

The Consolidated Statute on county rating is 15 & 16 Vict. c. 81.

By s. 2 of that Act it is enacted that the justices assembled at the general or quarter sessions, or any adjournment, may, as often as they may deem it necessary, appoint any number of justices, not exceeding eleven nor less than five, to be a committee for the purpose of preparing a basis or standard for fair and equal county rates, such basis or standard to be founded and prepared rateably and equally according to the full and fair annual value (*i.e.* by s. 6, the net annual value of any property, as the same is or may be required by law to be estimated for the purpose of assessing poor rate) of the property, messuages, lands, tenements and hereditaments rateable to the relief of the poor in every parish, township, borough or place, whether parochial or extra-parochial, within the respective limits of the said justices' commissions, or which, in any place within such limits not maintaining its own poor, would be liable to be rated for the relief of the poor if such last-mentioned place were a parish, or of altering and amending such basis or standard from time to time as circumstances may require: provided that in counties containing more than eleven petty sessional districts or divisions, the committee so appointed may be extended to a number equal to the number of petty sessional divisions, in order that one justice may be selected from the justices usually acting in each such petty sessional division, if the same shall appear convenient in the opinion of the justices appointing such committee.

Where counties are divided into divisions, having a separate county treasurer, see 27 & 28 Vict. c. 101, s. 3.

Unoccupied houses capable of being rated are to be included in the valuation under sec. 2: *R. v. Hammersmith*, 7 W. R. 524; 33 L. T. 182; *Maldon Overseers v. R.*, 38 L. J. M. C. 125; L. R. 4 Q. B. 326. Tenants in ancient demesne are not exempted: *R. v. Aylesford*, 2 E. & E. 538; 29 L. J. M. C. 83.

It was doubted whether the powers of the justices were not impliedly interfered with or controlled by the Union Assessment Act, 1862 (25 & 26 Vict. c. 103), but, by 29 & 30 Vict. c. 78, s. 1, the assessment under 15 & 16 Vict. c. 81, is not to be affected by the Union Assessment Act, 1862.

Overseers
to make
returns.

By sec. 5, power is given to the committee to direct the overseers and officials to make returns of the amount of the full and fair annual value of the property within their parish or township liable to be rated to the county rate.

Expenses
of valuation.

If the overseers or others neglect to make a proper return, the general or quarter sessions may order the whole of the costs and expenses incurred by the committee in ascertaining the amount to be charged on the parish, in addition to its county rate (sec. 10).

Order for
payment.

By sec. 11, where the committee have directed, under sec. 9, the whole or any part of any parish, &c., to be valued, and where, in the basis confirmed by the quarter sessions, the parish, &c., is rated on a sum greater than that in the return of the overseer, constable, or other person required to make such return in any place not maintaining its own poor, if there be no appeal made and prosecuted with success at the quarter session next after the confirmation, such session shall order the overseer, &c., of the parish, &c., to pay the expenses of the valuation. If there be an appeal to any quarter session, on the ground that the parish, &c., is rated on a sum beyond the fair annual value, and the basis be confirmed or not reduced to or below the sum set forth in the returns, such session shall order the overseer, &c., of the parish, &c., to pay the expenses of the valuation; such expenses to be raised, levied, and collected by the like ways and means as the county rate, and to be paid therewith.

Meaning of
fair annual
value.

The full and fair annual value is to be taken to mean the net annual value of any property as the same is or may be required by law to be estimated for the purpose of assessing the rates for the relief of the poor (sec. 6); and the committee may order the production of all parochial and other rates, &c., and all documents relating to the value of the property assessed in the hands of private individuals or public officers: *Dickson v. Doubleday*, 30 L. J. M. C. 99; except income-tax collectors, 26 & 27 Vict. c. 33, s. 22.

When basis
altered,
vestry to
have notice.

When the basis has been prepared, showing the total amount of the annual value of the property in any parish or place is estimated at a greater or less amount than the last preceding one, a copy thereof is to be sent to every acting justice of the county, and a copy (together with a notice of the time, not less than one calendar month after the date of the notice, within which objections may be forwarded to the overseers, &c., or any persons affected by the basis) to the overseers, constables, or other persons charged with the col-

lection of the rates (a) ; and the basis is to be submitted by the overseers to the vestry.

By sec. 15, notice is required to be given of the time when the basis will be considered by the quarter sessions. On the basis being finally approved by the committee, the committee must lay it before the next general or quarter sessions, which court will thereupon direct public notice to be given in one or more newspapers usually circulated in the county (b) that it will be taken into consideration at the next general quarter sessions, at which sessions the court *shall* take it into consideration, and alter and amend it as may seem proper, and, if they think fit, allow and confirm it, or instead of altering and allowing and confirming, *refer* it back for amendment to the committee, and adjourn the consideration of it to some future general or quarter sessions. In such case the committee have the same powers as provided for the original making out the basis under sec. 6. But before any such alteration or amendment is allowed or confirmed by the sessions, the committee must send fourteen days' notice by post or otherwise to every parish and place with regard to which the alteration is made.

The basis so allowed and confirmed is to be taken "to be (sec. 16) made and established, and shall be valid, legal, and effectual," notwithstanding any irregularity may have arisen in the making or omission to make the returns required, but subject nevertheless at all times to appeals against the same, as provided by sec. 17. And the basis so confirmed is to be deemed to be the standard on which all assessments of the county rate shall be made subject to any appeal (sec. 17), or any recommendation of the committee (sec. 20), under which, although there be no appeal made, the committee may from time to time revise any such basis on being so required by the court of general or quarter sessions for the purpose of meeting any partial changes that may have occurred in the rateable proportions of the property assessed, where, upon due inquiry, the committee may alter the basis forthwith, giving notice in writing of such alteration to the parish or place whose basis it is proposed to alter, and, upon some day to be named in the notice, shall hear and decide upon any objection that may be made by any person on behalf of any person, parish, or place; and upon

Notice to be given when sessions will consider the basis.

Proceedings before sessions.

"Basis" valid.

Subject to appeal.

Notice.

(a) This will now be to the Guardians of the Union, the office of High Constable being abolished.

See tit. "High Constable" (*infra*).

(b) *Sransca Dock Company v. Leven*, 20 L. J. Ex. 447.

the decision to alter such basis, the committee shall report the same to the next, or some subsequent general or quarter sessions, ten days' notice having previously been given to each parish or place whose basis has been altered, and the justices assembled thereat, after hearing the objections, if any, that may be made by any persons duly authorised to represent any such parish or place, may make such order as may appear just; and any order so made will be binding on all parties concerned.

Adjournment. Under sec. 21, the justices in general or quarter sessions, or at any adjournment thereof, may, as circumstances may appear to require it, order and direct a fair and equal county rate to be made for all the purposes for which the county stock or rate is made liable by law.

Local acts. Some counties have local Acts for regulating the making of county rates. Under sec. 47 of the general Act, the justices of such counties are empowered to proceed in the assessing of their county either under their local Act, or under the general Act in all such cases as are not inconsistent with the provisions of the general Act.

Justices to act in open court. All business relating to the assessment and application of a county rate must be transacted in open court, and no order otherwise made will be binding and effectual: sec. 48. And no ratepayer or person other than a member of the court can interfere with the jurisdiction of the justices, or take any part in the proceedings: *R. v. Nottingham JJ.*, 3 A. & E. 500.

Appeal under sec. 17 against the basis. By 15 & 16 Vict. c. 81, s. 17, if at any time after the basis or standard has been allowed, confirmed and made, any overseers of the poor, or other person charged with the collection and levy of county rate, in any parish, township or place, or inhabitant or inhabitants thereof, have reason to think that such parish, township or place is aggrieved

Grievances. by any such basis or standard, whether it be (1) on account of some one or more of such parishes, townships or places being without sufficient cause omitted altogether from the said basis or standard; or (2) on account of such parish, &c., being rated on a sum beyond the full and fair annual value of the property therein liable to be assessed towards the county rate; or (3) on account of some other parish or parishes, township or townships, place or places being rated on a sum less than the full and fair annual value of the property therein liable to be assessed towards the county rate, such overseer or overseers of the poor, constable or other person or inhabitant or inhabitants, may appeal to the

justices of the peace for the county at any quarter sessions to be holden after the sessions at which such basis or standard was allowed and confirmed, against such part only of the basis or standard as may affect the parish or parishes, township or townships, place or places, which appear to be over-rated or under-rated, or omitted altogether from the basis or standard (subject to the provisions hereinafter contained); and if in any case where any overseer or overseers, constable or other person as aforesaid of one parish or place appeals against the basis or standard of rate on any other parish or place, (1) on account of the same being altogether omitted from such basis or standard; or (2) on account of the same being rated at less than the full and fair annual value thereof as aforesaid, such overseer, &c., shall give *twenty-one* days' notice in writing previous to the first day of the session at which such appeal shall be made, of the intention to appeal, and of the cause and matter thereof, to the overseers of the poor; or where there are no such overseers, to the person charged with the collection and levy of county rate in such other parish or place; and if in any case (3) where any such overseer, &c., appeal on the ground that any parish, &c., is rated on a sum beyond the full and fair annual value of the rateable property therein, such overseer, &c., shall give *twenty-one* days' notice thereof in writing, with the cause and matter thereof, to the *clerk of the peace* of the county, the justices shall be empowered to hear and determine such appeal in manner by the Act directed, and either to confirm such parts of the basis or standard as have been appealed against, or to correct such inequalities or omissions as shall be proved to exist therein, in such manner as to the justices may appear fair, just, and equitable; but no such basis or standard shall upon any appeal be quashed or destroyed, in regard to any other parish, &c., unless in cases where the justices in quarter sessions assembled deem it necessary to proceed to the making of an entire new basis or standard, and where they proceed therein according to the provisions of this Act.

Notice as to (1) and (2) grievances.

Notice as to (3) grievance.

Court to determine appeal.

Basis not to be quashed except in entirety, to make new rate.

Under sec. 18, the Court may adjourn the hearing of such appeal that a survey and valuation of the parishes may be made in relation to the appeal; and may fix some subsequent sessions for receiving such survey and valuation, and for the hearing and determining the appeal; the Court may appoint a proper person to make the survey and valuation who shall have full power to make such survey by view, &c.

Court may adjourn for new survey.

Costs of survey.

By sec. 19, the costs of making such survey and valuation

will be costs in such appeal, and abide the event thereof. The Court may order costs to be paid by either party as the Court may think fit. Where the ground of appeal is that the parish, &c., is rated on a sum beyond the full and fair annual value of the property therein, and the decision shall be in favour of the appellants, the Court *shall* order the treasurer of the county rates to pay the appellants their costs out of the public stock of the county in his hands.

Appeal
under
sec. 22,
against the
rate.

Grievances.

“Practic-
able ses-
sions”
Sum.
Juris. Act
1879, s.
32.

Notice.

In a further appeal clause (sec. 22), if the churchwarden or churchwardens, overseer or overseers of the poor, or other inhabitant or inhabitants of any parish, township or place, whether parochial or otherwise, where there is no churchwarden or overseer, or person appointed to act as such, shall at any time thereafter have reason to think that such parish, township or place is aggrieved by any rate or assessment to be made upon the basis or standard before mentioned, either in pursuance of this Act or any Act or Acts now in force, whether it be (1) on account of the proportions assessed upon the respective parishes, &c., being unequal; or (2) on account of some one or more of them being without sufficient cause omitted altogether from the rate; or (3) on account of such parish, &c., being rated at a higher proportion of the pound sterling according to the fair annual value of the rateable property therein; or (4) on account of some other parish or parishes, &c., being rated at a lower proportion of the pound sterling according to the fair annual value of the rateable property therein than has been fixed and declared by the justices of the peace of the said county in sessions assembled as the basis of the rate of the said county; or (5) on account of the altered state of the value of the property assessed, or any part thereof; or (6) shall have any other just cause of complaint whatsoever, it shall be lawful for such churchwarden or churchwardens, overseer or overseers of the poor, or other inhabitant or inhabitants where there is no churchwarden, &c., to appeal to the justices at the *next* quarter sessions of the peace after such cause of appeal shall have arisen, against such part of the rate only as may affect the parish or parishes, &c., which are unequally rated, or which shall appear to be over-rated or under-rated, or omitted altogether from the rate: provided always, that *fourteen* clear days' notice in writing previous to the first day of such last mentioned quarter sessions shall be given by the parties intending to appeal to the parties against whose rate the appeal is to be made, also to the clerk of the peace of the county, and the hundred constable, of the grounds of such

appeal and the intention to try such appeal at such quarter sessions of the peace; and the justices are empowered to hear and finally determine the same; and either to confirm such parts of the rate as have been appealed against, or to correct such inequalities, disproportions or omissions as shall be proved to exist therein as well in respect of the basis or standard as in the assessment of the rate made thereon, in such manner as to the said justices shall appear fair, just and equitable, *anything* in the Act or any law, usage, or custom, to the contrary thereof notwithstanding: provided that the rate shall not be quashed in regard to any other parish, &c., unless where the justices shall deem it necessary to proceed to the making an entire new rate, and shall proceed thereon according to the Act. (*Supra*, sec. 17.)

Court to finally determine appeal.

Basis not to be quashed except in entirety to make a new rate.

The party appealing must show that the parish, township, or place on whose part he appeals is rated in a higher proportion with reference to some other parish, &c., than it ought to be: *R. v. Westmoreland JJ.*, 10 B. & C. 226.

Notwithstanding the appeal the rate is to be raised and levied. If on the hearing of the appeal the rate shall be ordered to be set aside, decreased or lowered, and any sums have been previously paid which ought not to have been paid, the Court "shall" order such sums to be repaid out of the general rate of the county (sec. 23). See 57 Geo. 3, c. 94, s. 2.

Rate to be collected although appeal and return ordered.

By sec. 24 the expenses of the appeals are to be borne in such proportions as the Court may order.

Costs.

For the more effectual prevention of frivolous appeals, the justices, upon proof before them of notice of any appeal having been given as authorised though the parties giving the appeal did not afterwards prosecute it, shall and may at the same sessions award and order to such person to whom such notice shall appear to have been given, such costs and charges as shall be thought reasonable and just to be paid by those giving the appeal.

Frivolous appeals.
Costs.

Section 51 defines "county" to mean any riding or division having a separate commissioner and treasurer; and any liberty, franchise, or other place in which rates in the nature of county rates may be levied, having a separate commission of the peace and not subject to the county or counties at large in which such liberty, &c., may lie, nor contributing to the county rates. And "county rate" means every rate assessed in the county or division for all purposes to which a county rate may be liable.

Definitions.

Section 52 defines a "parish" as a place maintaining its own poor, or one for which a separate poor rate may be made; a "union" means any number of parishes united together under the Poor Law Acts; "guardians" mean any board of guardians acting under the Poor Law Acts; and "hundred" means any hundred, wapentake, ward, or other district in the nature of a hundred by whatever name denominated. See *R. v. Carmarthen*, ante, p. 107.

County
stock
charged.

When a duty is imposed on a county, and costs are incidentally and necessarily incurred in enforcing it, the magistrates have the right to defray them out of the county stock; Lord Kenyon, C. J., *R. v. Essex*, 4 T. R. 594. But they cannot defray expenses not connected with county matters; as refreshments supplied as "sessions expenses." *R. v. Saunders*, 3 E. & B. 763; *R. v. Williams*, 3 B. & A. 215.

Excepting under express enactment, a rate cannot be made to reimburse antecedent expenses, although incurred for county purposes. *R. v. Flintshire JJ.*, 5 B. & A. 761; see *Cortis v. Kent Waterworks Co.*, 7 B. & C. 314; *Harrison v. Stickney*, 2 H. L. C. 108; so also *R. v. St. Peter's, York*, 2 Lord Raym. 1249.

The various claims upon the county stock and rates are created by numerous statutes; but as the particular items are not the subject of appeal, they can only be referred to as incidental to the proceedings affecting the several subjects treated of in this work.

DEALERS IN OLD METALS.

24 & 25 Vict. c. 110.

Object of
Act.

The 24 & 25 Vict. c. 110 was passed to extend to dealers in old metals the beneficial action of 17 & 18 Vict. c. 104, s. 480, as to marine store dealers, and which it had been found had diminished the facilities for disposing of stolen goods.

Definition
of "dealer
in old
metals."

Section 3 defines the term "dealer in old metals" as a person buying and selling old metal, scraps of broken metal, or partly manufactured metal goods, or defaced, or old metal goods, whether such person deals in such articles only or together with second-hand goods or marine stores; and the term "old metal" shall mean such articles.

Section 5. Dealers in old metals being also marine store To comply
dealers under 17 & 18 Vict. c. 104, s. 480, are to conform to with 17 &
the regulations of that section ; and by sec. 6 each dealer is 18 Vict.,
to keep the police acquainted with his place of business. c. 104,
s. 480.

Section 8 provides for the mode in which the dealer shall
conduct his business, and the books he shall keep and entries
he shall make therein, under a penalty of not less than 20s.
or more than £5 ; and for every subsequent offence not less
than £5 or exceeding £20.

Under sec. 4 upon complaint on oath to a justice of the Search
peace that the complainant believes that old metal stolen or warrant
unlawfully obtained is kept in any house, shop, room, or may issue.
place by any dealer in old metals within the limits of the
justice's jurisdiction, such justice may authorise by special
warrant any constable to enter in the daytime such premises
and to search for and seize all such old metals found there,
and carry the same before a justice exercising a similar
jurisdiction. And such dealer may then be summoned to Onus of
appear before two justices at a time and place to be named proof of
in the summons ; and if such dealer shall not then and there honest
prove to the satisfaction of such justices how he came by the possession
articles, or if he shall be found in possession of any old metal of the
which has been stolen or unlawfully obtained, and it shall be dealer.
proved, on his being taken before two justices, to their
satisfaction, that at the time when he received it he had
reasonable cause to believe it to have been stolen or unlaw-
fully obtained, then, in either case, he will be liable to a
penalty not exceeding £5 ; and for any subsequent offence to
a penalty not exceeding £20 ; or imprisonment *with* hard
labour for any period not exceeding three calendar months.
But this provision is not to interfere with the proceeding by
indictment.

Under sec. 9, penalties may be recovered under 11 & 12
Vict. c. 43 ; and costs of prosecution under 7 Geo. 4. c. 64.

Sec. 11 gives an appeal in all cases of convictions under Appeal.
the 4th sec. and in all other cases of convictions under
the Act where the sum adjudged to be paid exceeds £5, and
the person thinks himself aggrieved by such conviction. He
may then appeal to the next Court of Quarter Sessions
which is holden not less than twelve days after the day of
such refusal or conviction for the county, &c. wherein the
case has been tried ; provided, that such person shall give to
the justices or the complainant, as the case may be, a notice
in writing of such appeal, and of the cause and matter
thereof, within three days after such conviction ; and seven

clear days at the least before such sessions : and shall also within *such* period respectively enter into a recognizance with two sufficient securities before a justice of the peace conditioned personally to appear at the sessions and prosecute the appeal, and abide the judgment of the Court thereupon, and pay such costs as may be awarded. And the Court may award costs, and determine the appeal as it may see fit. See also as to the party electing to appeal, the Summary Jurisdiction Act, 1879, sec. 32.

On a conviction under the 4th sec., the court may direct that the dealer be registered, as having been convicted, at the police office where he will be under the regulations specified in sec. 8 ; but on appeal made such order will be suspended pending the appeal ; see sec. 5.

As to what may be considered to be a sufficient possession, see *R. v. Wilcock*, 14 L. J. M. C. 104 ; 7 Q. B. 317 ; *R. v. Wiley*, 20 L. J. M. C. 4.

DISSENTERS.

Every person knowingly permitting or suffering a congregation to assemble for the religious worship of Protestants (*a*) of more than twenty persons (besides the inmates of the house), in any place occupied by him until the place shall be certified and registered with the Registrar General of births, &c. (see 15 & 16 Vict. c. 36, and see also 18 & 19 Vict. c. 81) will be liable for every time such congregation shall meet to a penalty not exceeding £20, nor less than 20s., 52 Geo. 3, c. 155, s. 2. (See Summary Jurisdiction Act, 1879, s. 8.)

Any person teaching or preaching in such place without the consent of the occupier, for every such offence will forfeit not exceeding £30, nor less than 40s. : 52 Geo. 3, c. 155 s. 3 (*b*).

The doors of such assemblies are not to be bolted or

(*a*) As to Roman Catholic assemblies, see 2 & 3 Will. 4, c. 115 ; or Jews, 9 & 10 Vict. c. 59. See also 18 & 19 Vict. c. 86, s. 2.

(*b*) Any person wilfully, maliciously or contemptuously disturbing or disturbing any congregation assembled for religious worship and authorised under the

Act, or who shall disturb, molest or misuse any preacher officiating thereat, will upon proof by *two* or more credible witnesses before a justice, be bound over to appear at the quarter sessions to answer therefor ; and may on conviction suffer the pain and penalty of forty pounds.

barred, or otherwise fastened; penalty, not exceeding £20, nor less than 40s. 52 Geo. 3, c. 155, s. 11.

The 16 sec. 52 Geo. 3 gives to any person aggrieved by a Appeal. conviction under this Act an appeal to the Quarter Sessions for the county, &c., holden *next after* such conviction, giving unto the justices before whom such conviction was made notice in writing, *within eight* days after such conviction, of his intention to prefer such appeal; the justices in quarter sessions are to hear such appeal and award costs not exceeding 40s. See Sum. Jurisd. Act, 1879. Sec. 32 giving the option of appeal under that Act.

This statute, 52 Geo. 3, although still in force, may be considered as rendered practically obsolete by 18 & 19 Vict. c. 81, (s. 3,) for the certifying and registering places of public worship; and further, by 18 & 19 Vict. c. 86, for securing the liberty of religious worship in a place of meeting not certified, as to which no prosecution is to be maintained.

DYNAMITE (See FISH).

40 & 41 Vict. c. 65, s. 2; 41 & 42 Vict. c. 39, s. 12.

Any person using dynamite or other explosive substance to catch or destroy fish in a public fishery, will be liable on summary conviction either to a fine not exceeding £20, or to imprisonment with or without hard labour for a term not exceeding two months: 40 & 41 Vict. c. 65, s. 2. By 41 & 42 Vict. c. 39, s. 12, this section is to apply to the destruction or catching fish in a similar way in *any* water whether public or private within the limits of the Act.

As to an appeal on an imprisonment, see Summary Jurisdiction Act, 1879, secs. 19, 31.

EVIDENCE.

Best evidence to be produced. The first rule of evidence is that the best of which the case is capable shall be given. The party failing to produce the best evidence without a reasonable excuse, affords the presumption that it would be against him. See *Jarvis, C. J.*, in *Twyman v. Knowles*, 13 C. B. 224; *Best on Ev.*, pt. 1, c. 1, ss. 87, 89. The rule does not exclude any evidence in the abstract, but gives rise to comparisons with better evidence which might be produced. Where no better evidence can be obtained, secondary evidence becomes admissible and has its force.

Docu- Where a written document is the foundation, in law, of mentary evidence. the proceeding in issue, it must be produced in evidence before its contents can be spoken of. The rule for the letting in secondary evidence of the contents of a written document was settled in the House of Lords on the trial of Queen Caroline, 2 B. & B. 286; it is divided under the five following heads:—

1. Where the written document is lost or destroyed;
2. Where it is in the possession of the adverse party who refuses or neglects to produce it;
3. Where it is in the possession of a party who is privileged to withhold it, and who insists on his privilege;
4. Where the production of the document would be, on physical grounds, impossible or highly inconvenient;
5. Where the document is of a public nature, and some other proof has been specially substituted for reasons of convenience. See 42 Vict. c. 11.

Proof of deed. Where it is only by deed that the foundation of the case or title can be made (as in the binding an apprentice), the deed must be proved; or, if lost or destroyed, secondary evidence of its contents may be produced. *R. v. East Knogle*, Barr. S. C. 151; 2 Bott. 644.

When lost and a counter-part. Of the loss or destruction of the deed satisfactory proof must not only be given, but where there has been a counterpart of the deed, that must be in evidence, or its loss also accounted for.

Where both deed and counter-part lost—secondary evidence admitted. Upon either the deed or counterpart being traced into the possession of some one person, that person must under most circumstances be subpœnaed as a witness and prove its loss or destruction. See *R. v. Castleton*, 6 T. R. 236; *R. v. Denio*, 7 B. & C. 620; this rule is, however, subject to modification.

Where only one part of an indenture had been executed, and the pauper and master were both dead at the time of the trial, but shortly before the pauper's death he had stated that the indenture had been given up to him after the expiration of the apprenticeship, and that he had burnt it; and no trace of the deed could be found amongst the papers either of the master or the pauper, it was held that a sufficient inquiry had been made to admit the secondary parol evidence, and a distinction was drawn between that case and *R. v. Castleton*, for there was evidence there that a *further search* was necessary. *R. v. Morton*, 4 M. & S. 48; see also *R. v. Piddlehinton*, 3 B. & Ad. 460.

Evidence of search to let in secondary evidence.

After a lapse of forty years from the time of the indenture every person was called with whom there was a possibility of its being found; it was held such due diligence had been used to obtain the primary evidence without success as ought to let in the secondary evidence. *R. v. East Farleigh*, 6 D. & R. 147; 2 D. & R. Mag. Ca. 71.

In a case tried in 1863, the counterpart of a parish apprenticeship deed was produced from the parish chest of H. The document purported to be a binding as an apprentice of T. W. to T. B. by the parish officers of H. The document was signed and sealed by T. B., but not by the churchwardens and overseers of the parish. No indentures could be found, on search, amongst the papers of the deceased apprentice, and no further search was made. It was held, that inasmuch as it was more probable the indenture would have been kept by the apprentice after serving his time, and considering the lapse of time (72 years) a sufficient search had been made to let in the secondary evidence. *R. v. Hinckley*, 32 L. J. M. C. 158.

The mother of a pauper proved that she had twenty-four years previously apprenticed her son as a parish apprentice, and had received money from the overseers for that purpose; and that after the indenture had been executed, she had sent it to the overseers of the parish. Diligent search had been made in the parish chest for the deed without finding it. The executor of the deceased apprentice was applied to, who was certain no such document was in his possession when he died. Lord Tenterden, L. C. J., and Bayley, J., held that, considering the nature of the document, and the circumstances of the case, there was reasonable evidence that the document had been lost. It was unnecessary, and would be unreasonable and absurd, to produce all the parish officers for each year from the time of the apprenticeship to

Presumption of loss of deed.

trace the loss of the instrument. The parish chest was the natural and probable place for the indenture to be found in; and not being found there, the reasonable inference was it was lost: *R. v. Stourbridge*, 8 B. & C. 26; see also *R. v. Saffron Hill*, 1 E. & B. 93; 22 L. J. M. C. 22, holding that although the degree of diligence which is necessary for the search for the lost instrument, in order to let in the secondary evidence of its contents, cannot be easily defined, the party is expected to show he has in good faith exhausted to a reasonable degree all the sources of information and means of discovery, which the nature of the case would naturally suggest, and which were accessible. See *M'Gahey v. Alston*, 2 M. & W. 206; *Gathercole v. Miall*, 15 *ib.* 319; *Brewster v. Sewell*, 3 B. & A. 299.

Evidence
of person
last in
possession
of deed.

Some doubts have existed whether if the person to whom the document had been traced was not called as a witness, evidence of any answers by him could be given respecting the document. Such answers had been admitted to inform the conscience of the court whether the search was a reasonable one, and as preliminary to the receiving the secondary evidence. It was received in *R. v. Morton*, 4 M. & S.; *R. v. Braintree*, 1 E. & E. 51; 28 L. J. M. C. 1; see also *R. v. Kenilworth*, 7 Q. B. 642; *R. v. Saffron Hill (sup.)*. It was rejected in *R. v. Denio*, 7 B. & C. 620; see also *R. v. Fordingbridge*, E. B. & E. 678; 27 L. J. M. C. 290; *R. v. Rawdon*, 2 Ad. & Ell. 156.

Statements
by him
evidence.

In a recent case in Ireland it was held that in order to show a sufficient search had been made for the lost document, evidence was admissible of persons who had made inquiries of those likely to have had possession of it, and of the replies given by them to such inquiries, without producing any affidavits from those persons as to the extent and result of their searches: *Smith v. Smith*, 10 Ir. R. Eq. 273, V. C.

Presump-
tion that
all con-
ditions to
deed had
been rightly
done and
stamped.

In 1806, a question arose on an indenture of apprenticeship made in 1774 or 1775—namely, whether it had been stamped. Notwithstanding the negative evidence of the deputy registrar and comptroller of the apprentice duties that it did not appear that any such indenture had been stamped with the premium stamp, or enrolled from 1773 to 1775, the sessions presumed that everything had been rightly done, and the court supported their decision: *R. v. Long Buckby*, 7 East, 45. But where there is in such a case *some* direct evidence that the indenture had not been stamped, the stamping will not be presumed:

R. v. St. Helen's, Abingdon, Burr. S. C. 292, 735; 2 Bott, 600.

In a case before the House of Lords, the burthen of proof that an instrument, which is either lost or retained by the opposite party after notice to produce it, was unstamped, was held to lie, in the first instance, on the party objecting to its production, on the ground that it is unstamped. Where there was no evidence on either side, it would be presumed to have been stamped. But where once satisfactory evidence had been given that at a particular time the instrument was unstamped, there was an end to every presumption of law in favour of its having been stamped, and the onus of proof was shifted, and the party who relied on the instrument would be called on to prove it was duly stamped: *Marine Investment Co. v. Havside*, L. R., 5 H. L. 624; 42 L. J. Ch. 173; see 1 Taylor on Evid., § 148, p. 161, edit. 7th.

Where under the 2nd rule in the Queen's case the document to be produced is in the custody of the adverse party, notice to produce it must be given to let in the secondary evidence; this is done to secure the best evidence if the party be willing to produce it: see *Dwyer v. Collins*, 7 Ex. R. 639. It is sufficient to dispense with the notice to produce if the party has the required document in court: see *Cootes v. Birch*, 2 Q. B. 252; *Bate v. Kinsey*, 1 Cr. M. & R. 38; Ros. Ev. 9.

It is not necessary where the document tendered in evidence is a duplicate original. *Phillipson v. Chace*, 2 Camp. 110; *Collins v. Trewick*, 6 B. & C. 398; or a counterpart; *Burleigh v. Stibbs*, 5 T. R. 465; *Mayor of Carlisle v. Blamire*, 8 East, 487; or where the document has been obtained possession of by fraud or force: *Godered v. Armour*, 3 Q. B. 956; *Doe v. Ries*, 7 Bing. 724.

It is sufficient if the notice to produce leave no doubt but that the party must be aware of the particular instrument intended to be called for: *Rogers v. Custance*, 2 M. & R. 179; as in *Jacob v. Lee*, *ib.* 33; *Morris v. Hanser*, *ib.* 392, in which a general notice was given to produce all letters without specifying any particular dates was held to be sufficient.

The giving the notice to produce any document or letter, and the non-compliance therewith, does not authorise any inference against the party failing to produce it, unless it be that the document was properly stamped: *Cooper v. Gibbons*, 3 Camp. 363. The non-production may give rise to matter of comment: *Bate v. Kinsey*, 1 C. M. & R. 41. See 24 Beav. 679; *Att.-Gen. v. Windsor* (Dean, &c.)

Barthen of
proof that
deed not
stamped.

Notice to
produce
documents.

Notice to
produce
letters.

Conse-
quences of
the notice
to produce.

If the party receiving notice to produce a document neglects to do so when called on, he cannot afterwards produce it as part of his own case in order to contradict the secondary evidence. *Doe v. Hodgson*, 12 A. & E. 135.

If the documents are called for and inspected, they will be rendered evidence for the opposite party: *Wilson v. Bowie*, 1 C. & P. 10; but not if he calls for them without inspecting them: *Sayer v. Kitchen*, 1 Esp. 210.

The party calling for a document must be prepared to prove it.

On the party producing a document after notice, the one requiring it must be prepared to prove it, and to place it in evidence as a legal document. See *Gordon v. Secretan*, 8 East, 548; *Sideways v. Dyson*, 2 Stark. 49; *Graham v. Dyster*, 2 ib. 23.

Secondary evidence where originals cannot be produced.

Inscriptions on a wall or tombstone, entries in public registers and books, the production of which are inconvenient or impossible, may be proved by secondary evidence: *Mortimer v. McCullan*, 6 M. & W. 68; 1 Taylor, Ev. 396. A certified copy from the registrar of births, &c., evidence: *R. v. Weaver*, L. R. 2 C. C. 85; 43 L. J. M. C. 13; 29 L. T. 544; 22 W. R. 190. See also the Bankers' Books Evidence Act, 1879 (repealing the Act of 1876): *Harding v. Williams*, 49 L. J. Ch. 661. As to certified copies relating to public companies, see the Companies' Act, 1877, 40 & 41 Vict. c. 26.

Direct and presumptive evidence.

All evidence in a court of justice either leads directly to establish the fact in controversy, or affords a ground from which the existence of it may be inferred. The first is positive, the second presumptive proof. Positive evidence is where the existence of some fact is the immediate and necessary conclusion from the evidence. Presumptive evidence affords only a probability, more or less strong, according to the circumstances from which it is deduced.

The premises from which conclusions of a presumptive nature may be drawn present all the variety of cases to be conceived between the nearest approximation to certainty and bare possibility. The presumption may be violent, and afford competent legal evidence where the circumstances clearly appear and the balance is not at all equivocal. Or they may be proper subjects for deliberation and suspense, in which those who have to decide in probable or doubtful cases deliberate on the strength or weight of evidence, and having struck a fair balance, decide according to the preponderancy. See "McNally's Rules of Evidence," 578.

Circumstantial evidence.

The different modes of proof are again distinguished by the terms "direct" or "circumstantial evidence." Direct

evidence is meant when the principal fact, or *factum probandum*, is attested directly by witnesses, things, or documents. To all other forms the term circumstantial evidence is applied. Evidence operating in the way of inference from circumstances otherwise called indirect or oblique (Vinnius, Jurisp. Contr. lib. 4, c. 25), inferential and argumentative, 19 How. St. Trials, 33; Best on Presumptive Evidence; Taylor on Evidence, sec. 65. To find a positive fact on circumstantial evidence there should exist a reasonable and moral certainty in support of it, and inconsistent with any other rational conclusion. Circumstantial evidence may vary in strength from the lowest possible amount to almost certainty; the first consideration is to see that the facts are properly and conclusively proved; and then to consider what is the conviction left on the mind on which reasonable and responsible men could feel themselves justified in acting in any grave and serious matter in life.

"In dealing with circumstantial evidence," said Lord Cairns, in clear and forcible language, in *The Belhaven and Stanton Peerage Case*, 1 App. Cas. 278, "We have to consider the weight which is to be given to the united force of all the circumstances put together. You may have a ray of light so feeble that by itself it will do little to elucidate a dark corner. But on the other hand, you may have a number of rays, each of them insufficient, but all converging, and brought to bear upon the same point, and when united producing a body of illumination which will clear away the darkness which you are endeavouring to dispel."

As a general rule hearsay evidence is not admissible, as not being made under the sanction of an oath; *Meers v. Lord Stourton*, 1 P. Wms. 146; *Lord Shaftesbury v. Lord Digby*, 2 Mod. 99; 2 St. Trials. 809.

Several exceptions may, however, be enumerated to this proposition:—

1. Evidence which has already been given in judicial proceedings, and which cannot be obtained from the original source; as depositions or affidavits.

2. Statements contained in ancient documents on the subject of ancient possessions.

3. Statements of deceased persons on questions of pedigree.

4. Evidence of public reputation on questions of public or general right.

5. Statements of deceased persons speaking against their own interest.

6. Statements of deceased persons making entries, &c., in the regular course of their duty or employment.

7. Statements having reference to the health or sufferings of the person who makes them.

8. Dying declarations (a).

9. To these may be added admissions or declarations made by a principal, or his agent made during the continuance of the agency in the pending transaction. *R. v. Hall*, 8 C. & P. 358; 1 Taylor on Evidence, 513, s. 602 (7th ed.).

The excluding of hearsay evidence in questions of pedigree, prescription or custom would prevent all testimony whatever. In these cases the law departs from its general rule, and receives evidence of deceased persons, who, from their situation, were likely to know the facts; and also the general reputation of the place or family most interested to preserve in memory the circumstances attending it. In other cases such evidence might be wholly inadmissible.

Dying de-
clarations.

Hearsay
evidence
when *res
gestæ*.

The evidence of a dying declaration is admissible in no civil proceeding; see *R. v. Ferry Frystone*, 2 East, 54; *R. v. Chadderton*, *ib.* 27; *R. v. Abergrilly*, *ib.* 63; 2 Stark. Ev. 369. When hearsay evidence is introduced, not as a medium of proof in order to establish a distinct fact, but as constituting part of the *res gestæ*, it is admissible; to exclude it might be to exclude the only evidence of which the nature of the case is capable. Such evidence is, in fact, more of the nature of original evidence as verbal acts, and surrounding circumstances which may always be shown along with the principal facts (b). Whether such evidence forms a part of the *res gestæ* is to be determined by the judge according to the relationship they bear to the fact; *Ravson v. Haigh*, 2 Bing. 104; *Ryde v. Gyde*, 9 *ib.* 349; see also Lord Campbell's remarks in *R. v. Bedfordshire*, 4 E. & B. 541.

Evidence of
reputation.

As to the admission of evidence of reputation whether a road was public or private; see *R. v. Bliss*, 7 A. & E. 555;

(a) See Roscoe's Cr. Evid. 27.

(b) An illustration of the *res gestæ* was before the Supreme Court of Massachusetts, where the owner of a gamecock was charged with an intent to engage him in an exhibition of fighting. The police found the defendant and a crowd of men collected in the defendant's kitchen, and found feathers on the floor, and a gamecock with his wings

trimmed; there was no other evidence of a fight excepting the exclamations of the crowd when surprised by the officers. It was held that what was said and done upon the irruption of the officers upon the company was admissible in evidence as part of the *res gestæ*: *Commonwealth v. Ratcliffe*, Massachusetts Law Reporter, Law Journ. Paper, 2nd April, 1881.

the boundaries between counties, parishes, &c., see *Thomas v. Jenkins*, 6 *ib.* 525; *Briscoe v. Lomax*, 8 *ib.* 198; *Evans v. Rees*, 10 *ib.* 121; *Plaxton v. Dure*, 10 B. & C. 17; the limits of a town, *Ireland v. Powell*, Pea. Evid. 16; *R. v. Bliss* (*supra*); a prescriptive liability to repair a sea wall, *R. v. Leigh*, 10 A. & E. 398; or bridges, *R. v. Sutton*, 8 *ib.* 516; a claim of a highway, *Crease v. Barrett*, 1 C. M. & R. 929; a right of ferry, *Pim v. Curell*, 6 M. & W. 234; a prescriptive right to a toll, *Duke of Beaufort v. Smith*, 4 Ex. 450.

Reputation is inadmissible to prove a person's age: *Colclough v. Smith*, 10 L. T. 918 Ir. R.

In questions of boundaries, the fact of a perambulation having taken place, being evidence of the exercise of a right, statements made by the perambulators are declarations accompanying acts, and admissible in evidence, provided they are not confined to particular circumstances: 1 Phil. Evid. 248; *Taylor v. Davey*, 7 A. & E. 415; *Weeks v. Sparke*, 1 M. & S. 687.

Where the case involves matters of public or general interest wherein reputation is evidence, a verdict or judgment on the matter directly in issue, though pronounced in a cause litigated between strangers to the parties on the record, is admissible in evidence; not as tending to prove any specific fact existing at the time, but as evidence of a solemn adjudication by a competent tribunal upon the state of facts, and the question of usage at the time: *Pim v. Curell*, 6 M. & W. 266; *Earl Carnarvon v. Villebois*, 13 *ib.* 313; *Brisco v. Lomax*, 8 Ad. & E. 198; *R. v. Brightside Berlow*, 13 Q. B. 933; *Petrie v. Nuttall*, 11 Ex. 569.

To render declarations against interest admissible, it must appear by proof or presumption that the declarant is dead: *Doe v. Michael*, 17 Q. B. 276; *Phillips v. Coll*, 10 A. & E. 106; *Spargo v. Brown*, 9 B. & C. 935.

Oral declarations are admissible when made against the party's interest: *Stapylton v. Clough*, 2 E. & B. 933; *Fursdon v. Clogg*, 10 M. & W. 572. So also as to letters, *Doe dem. Brune v. Rawlins*, 7 East, 279; *Doe v. Turford*, 3 B. & Ad. 898; *Short v. Lee*, 2 J. & W. 475.

The declaration of a deceased mother as to the time of the birth of her child is admissible in evidence in all cases of pedigree, and so, therefore, in cases of settlement of a pauper: *R. v. Birmingham (a)*, 9 B. & C. 925; 4 M. & R.

(a) *R. v. Birmingham* is misquoted in Burn's Justice of the Peace, tit. "Poor," 331. It has no

reference to the place of birth as there stated. See *Pendrill v. Pendrill*, 2 Str. 924.

691. This case is also treated of in Hubback on Succession, 660 ; 1 Taylor's Evidence, 507 ; see also Hubback on Succession, 468, referring to *Hood v. Lady Beachamp*, 8 Sim. 26 ; also *Monckton v. the Attorney-General*, in which Lord Brougham, L. C., draws the distinction between questions of pedigree and what is evidence of detail ; 2 Russ. & Myl. 162.

Place of birth.

Entries in the family Bible.

It is only in reference to a matter of pedigree that such evidence could be admitted ; in *Whittaker v. Waters*, 4 C. & P. 375, Park, J., rejected such evidence as to the death of a *cestui que trust* on the ground that it was not a question of pedigree. See also *R. v. Rishworth*, 2 Q. B. 476, 483, 485, 487 ; *R. v. Yelverton*, 6 Q. B. 801 ; *R. v. Ecclesall Bierlow*, 11 A. & E. 607 ; *R. v. Chudderton*, 2 Ea. 27. It is no evidence of the *place* of birth : *R. v. Erith*, 8 East, 539. Entries made in the family Bible, produced from the proper custody, are evidence of pedigree without proof of handwriting or authorship : *Hubbard v. Lees*, L. R. 1 Ex. 255 ; 35 L. J. Ex. 169 ; 14 L. T. 442 ; 4 H. & C. 418.

The *place* of birth may be proved by some person who saw the mother in the parish immediately before and after the event, and saw the offspring, and can give some evidence of identity : *R. v. Trowbridge*, 1 Man. & R. 7 ; 7 B. & C. 252.

The register of baptism is not *alone* evidence of the place of birth : *R. v. North Petherton*, 5 B. & C. 508 ; 8 D. & R. 325. It is only evidence of the christening, per Lord Mansfield, C. J., *Goodright v. Moss*, Cowp. 591. Where, however, there is evidence of a continuous residence in the parish of the parents in addition to the register of baptism, such a combined testimony has been held sufficient to prove the *place* of birth : *Creech St. Michael v. Pitminster*, Burr. S. C. 765 ; Bott, 28.

Entries made in books in the course of a duty.

In a question of the settlement of a pauper by hiring and service, the entries in the books of the deceased master showing the pauper was engaged for half a year only were rejected as evidence on the ground that although it might be the *practice* for him to make such entries, it was not his *duty* : *R. v. Worth*, 4 Q. B. 132. See also *Brain v. Preece*, 11 M. & W. 773. But where an entry is made in the master's book of the terms of the contract, it cannot be received by oral evidence : *Evans v. Roe*, L. R. 7 C. P. 138 ; 26 L. T. 70.

Entries in rate books.

An entry of receipts in a rate-book by a deceased clerk or collector duly appointed will be evidence of the payment of rates : *R. v. St. Mary, Warwick*, 22 L. J. M. C. 109. Such

an entry was in the performance of a duty, and therefore admissible: see *Davies v. Lloyd*, 1 C. & K. 275.

The report of facts necessary to the performance of a duty, but being the statement of extraneous circumstances, however naturally they may be thought to find a place in the narrative, is no proof of those circumstances: *Chambers v. Bernasconi*, 1 C. M. & R. 368; per Lord Denman, C. J. See *Percival v. Nanson*, 7 Ex. 3; per Pollock, C. B.

Extraneous entries not evidence.

The entry must be contemporaneous with the Act to which it relates: *Doe v. Bevis*, 18 L. J. C. P. 128; 7 C. B. 456; *Doe v. Skinner*, 3 Ex. 84; *Doe v. Turford*, 3 B. & Ad. 890; *Hill v. Hibbit*, 19 W. R. 250, James, V.-C.

Entry contemporaneous.

To make declarations or entries admissible, the death of the party making them must be clearly proved; showing him to be dangerously ill will not be sufficient. *Butler v. Mountgarrett*, 7 H. L. C. 633. See also *Harrison v. Blades*, 3 Camp. 457; *Manby v. Carter*, 1 Price, 225; *Cooper v. Marsden*, 1 Esp. 1; *Polini v. Gray*, *Sturla v. Freccia*, 12 Ch. D. 411; 49 L. J. Ch. 41; 40 L. T. 861; 28 W. R. 81, C. A.

Person making the entries must be dead before entry made.

Except where the entries appear in books kept in certain public departments, as by officers of excise and inland revenue, when the entries made by authorised persons are proofs of the facts recorded. But these entries are admitted under special enactments, otherwise the general rule prevails.

Except where made by public officers.

In an excise information entries in the excise survey books are evidence of the facts entered therein of the trade carried on by a defendant, without calling the officers to substantiate them: *R. v. Grimwood*, 1 Price, 369; cited in Manning's Exch. 227. See also Highmore's Proceedings in Revenue Cases, 43. See also 7 & 8 Geo. 4, c. 53, s. 19; and since August, 1867, see 30 & 31 Vict. c. 90, s. 12.

Entries in excise survey books.

The counterpart of the permit with request note will be evidence without producing the original: 2 Will. 4, c. 16, s. 19.

The permit.

All entries made in proceedings by the Crown are evidence for the Crown: *Ellis v. Watson*, 2 Har. R. 453; 7 & 8 Geo. 4, c. 53, s. 19.

Crown entries.

The fact of rating can only be legally proved by the production of the rate books. *R. v. Coppull*, 2 East, 25; recognised by Pattison, J., in *R. v. Stapleton, Fitzpaine*, 2 Q. B. 494. Vestry books are recognised as public documents: *Swift v. Tierman*, 11 Ir. R. Eq. 602; *Willand v. Lord Middleton*, *ib.* 603. So also are registers of marriages made abroad and kept by the British consul since July 28,

Rate books.

Vestry books.

Marriage registers kept abroad. 1849: 12 & 13 Vict. c. 68, ss. 12, 17; see Ros. N. P. Evid. 968.

Quarter sessions records. The orders of quarter sessions respecting the removal of paupers may be proved by the proper books and entries made by the clerk of the peace, and no more formal entry be kept: *R. v. Yeozeley*, 8 A. & E. 806. As to whether the record is conclusive between the parties would depend on whether it was a decision on the merits: see tit. "Appeal," *infra*; *R. v. Leeds*, 9 Q. B. 910; *R. v. Macclesfield*, 13 Q. B. 881; and other cases.

Convictions recorded at quarter sessions. All convictions made at petty sessions are recorded at the quarter sessions: see *Ex parte Hayward*, 3 B. & S. 546; Factories and Workshop Act, 1878, 41 & 42 Vict. c. 92; and see also *infra* tit. "Summary Convictions."

Proof of an officer acting in a public capacity. Upon the maxim, "*Omnia presumuntur esse rite et solemniter acta donec probetur in contrarium*," it is a presumption of law that a person acting in a public capacity, as a peace officer, justice of the peace, &c., is duly authorised to do so: *R. v. Verelst*, 3 Camp. 432; Gordon's Cases, 6 H. & N. 145; 27 L. J. Ex. 176. See also *Radford v. McIntosh*, 3 T. R. 632; *Brewster v. Sewell*, 3 B. & A. 302; Tay. Evid. § 431, 2nd ed.

So proof that a person fills the office of churchwarden is *prima facie* evidence of his having been lawfully appointed, even where the title turned on the question of his right to the possession of land as churchwarden. *Granville v. Utting*, 9 Jur. 1081; *Doe d. Bowley v. Baines*, 15 L. J. Q. B. 293; 8 Q. B. 1037.

Assistant overseer. So the *acting* assistant overseer is evidence of the appointment. Tindal, C. J., *Cannell v. Curtis*, 2 Bing. N. C. 228; S. C. 2 Scott, 379; *McGahey v. Alston*, 2 M. & W. 206; *Doe v. Barnes*, 8 Q. B. 1037.

Excise officer. An excise officer may prove his official position by the fact of actually keeping an office of excise, or being a reputed commissioner or collector, or officer, and acting as such. 26 Geo. 3, c. 77, s. 12; 7 & 8 Geo. 4, c. 53, s. 17; 39 & 40 Vict. c. 36, s. 261. See Highmore's Sum. Proceedings in Inland and Revenue Cases, p. 40.

Officer employed in the prevention of smuggling. On a question arising whether an officer of the army, navy or marines employed in the prevention of smuggling and on full pay, or officer of customs or excise, is duly appointed to act, his own evidence thereof, or other evidence of his having *acted* as such will be sufficient, without producing the appointment. 39 & 40 Vict. c. 36, s. 261.

When Where *prima facie* it is shown that a person exercises a

particular office, the party disputing it, it would seem, should show he is not duly appointed or licensed. See *Grenaire v. Le Clerk Bois Valon*, 2 Camp. 144. However, when no admission has been made of the title of the officer to act, and no special Act provides for the proof, the safer course will be to be prepared to prove the appointment in the ordinary way. Tay. on Evi. § 141, p. 151, 2nd. ed.

official
authority
disputed.

The general rule is that the burthen of proof lies on the party asserting the affirmative of the issue or question in dispute, and for which is the maxim, "*Eo incumbit probatio qui dicit non qui negat.*" "This is a rule to which the common sense of mankind at once assents," remarks Best in his work on Presumptive Evid., p. 358. See also Tay. Evid. p. 332.

Burthen of
proof.

In appeal cases generally the respondent begins, as the affirmative and main issue is on him to prove; or should the appellants admit the whole of the respondents' case, and set up an affirmative issue in reply, then the appellants will begin, the issue resting on them.

Respon-
dent to
begin.

In appeals against a conviction, the law presuming innocence until the guilt be proved, the issue is (except in revenue cases) on the respondent to prove.

Where an exception or proviso is mixed up with the offence in the same clause in the statute, like in an indictment, an information must show negatively, that the party or matter pleaded does not come within the meaning of such exception or proviso. These negative averments were formerly to be proved by the prosecutor; but the correct rule now is, that in cases where the subject of such averment relates to the defendant personally, or is peculiarly within his knowledge, the negative is not to be proved by the prosecutor, but on the contrary, the affirmative must be proved by the defendant as matter of defence; but, on the other hand, if the subject of the averment do not relate to the defendant personally, or be not within his peculiar knowledge, but either relate personally to the prosecutor, or be peculiarly within his knowledge, or, at least, be as much within his knowledge as within that of the defendant, the prosecutor must prove the negative. Arch. Cr. Pl. 222 ed. 1875; 228 ed. 1878. (See *post*, sec. 39, Sum. Juris. Act, 1879.)

Where
negative
averments.

Thus:—Informations for selling ale without a licence must negative the existence of the licence; but the defendant must prove he has a licence, and the informer need not prove the negative: *R. v. Hanson*, K. B. M. T. 1821; Paley on Convic., p. 129 [6th ed.] M.S. As to killing game without

a qualification, see *R. v. Turner*, 5 M. & S. 206 ; see also *R. v. Gilroys*, 4 Sc. Sess. Ca., 3rd series, 656.

Burthen
shifted in
revenue
cases on the
defendant.

In proceedings for the protection of the Inland Revenue the burthen of proof has been shifted by the legislature in some instances, and is cast on the defendant. And in case of any seizure the proof that the duty has been paid, or that the goods, commodities or things seized as forfeited, are not of the sort or kind alleged in the information, lies in the proprietor or claimer : 7 & 8 Geo. 4, c. 53, s. 76.

As to servants or carriages, see 32 & 33 Vict. c. 14, s. 27 : As to dogs, see 30 & 31 Vict. c. 5, s. 8 ; 41 & 42 Vict. c. 15, s. 19 : as to beer, see 23 & 24 Vict. c. 113, s. 36 ; 6 Geo. 4, c. 81, s. 26 : as to the quantity of gold or plate contained in an article sold, see 30 & 31 Vict. c. 90, s. 5 : as to spirits sold under a permit, see 43 & 44 Vict. c. 24, s. 105 (9).

Effect of
Summary
Jurisdic-
tion Act,
1879, s. 39,
(2), on
negative
averments.

The Summary Jurisdiction Act, 1849, s. 39, sub-s. 2, has this enactment :—Any exception, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the Act, order, bye-law, regulation, or other document creating the offence, may be proved, but need not be specified or negatived in the information or complaint, and if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant. This section will not, however, affect the Crown, as in Revenue cases : see also 11 & 12 Vict. c. 43, s. 14.

Examina-
tion of the
witness.

Although as a general rule "*leading questions*," that is, questions which suggest the answer desired, or which admit of a conclusive answer by a simple negative or affirmative, are not allowed ; still, to abridge the proceedings, and to bring a witness to the material points, the counsel may lead him on to that extent, and may refer to acknowledged facts in the case which had been established : see *Nicholls v. Dowding*, 1 Stark. R. 81, *per* Lord Ellenborough. So a leading question may be put to refresh a witness's memory, where an omission is evidently caused from a want of recollection, which the suggestion may assist : *Acerro v. Petroni*, *ib.* 100, Lord Ellenborough. So, where he is called on to identify a particular person : *R. v. Watson*, 32 How. St. Tr. 74, *per* Lord Ellenborough ; 2 Star. R. 128 (S.C.) ; *R. v. Berenger*, *ib.* 129. So also, where a witness is called to contradict another as to the contents of a lost letter, and who cannot, off-hand, recollect all its contents, the particular passage may be suggested to him, at least after his unaided memory has been exhausted : *Courteen v. Touse*, 1 Camp. 43, *per* Lord

1 Stark.
on Evid.
169.

Ellenborough. So also, where the witness is called to contradict another who has denied using certain expressions, the particular words may be put to him : *Edmunds v. Walter*, 3 Star. R. 8, *per* Abbot, C. J. The Court has a general power of relaxing the rule in allowing leading questions, and such a mode of examination (which might approach more to the form of cross-examination) will be allowed where the witness, by his conduct, shews himself adverse and hostile to the party producing him, or interested for the other party, or evidently unwilling to give evidence : *Clarke v. Saffery*, Ry. & M. 126 ; *Chapman's Case*, 8 C. & P. 558, Lord Abinger, C. B.

A witness must only depose to facts within his own knowledge, unless where the question is one of reputation. See *Bonfield v. Smith*, 12 M. & W. 405. He is not required to speak with a certainty excluding all doubts in his mind. He may disclose his own personal recollection, leaving the weight to be judged by others. *R. v. Stafford*, 7 How. St. Tr. 1378-80, *per* Lord High Steward Finch. *Miller's case*, *per* De Grey, C. J., 3 Wils. 427 ; Tay. Evid. 7th ed. 1188. To speak to facts within knowledge.

Experts and scientific witnesses may give evidence of their belief and opinion, and draw inferences respecting the fact in question, from other facts, provided they are within his personal knowledge. See *Miller's case* (*sup.*) *Folkes v. Chadd*, 3 Doug. 159 (Lord Mansfield) ; *R. v. Schlesinger*, 10 Q. B. 670 ; Ros. N. P. Evid. 14 ed. p. 175. Experts.

In some cases the party principally interested is, by enactment, to be specially confirmed, as in the case of a mother affiliating a child on the alleged father, when she is required to be confirmed in some *material* particular. "This rule has been wisely established, in order to protect men from accusations which profligate, designing, and interested women might easily make ; and, which, however false, it might be extremely difficult to dispute." See Tay. Evi. § 964, 7th ed. (See tit. "Affiliation.") Corroboration of witness.

Collateral facts are excluded when they cannot raise any fair influence respecting the matter in issue ; but they may be admissible when used for the purpose of establishing a person's identity, or of corroborating a witness in some material particular. Tay. Evi. §. 335, 7th ed. Collateral facts.

How far a party may be at liberty to contradict his own witness has formed the subject of salutary enactment in the Common Law Procedure Act, 1854, 17 & 18 Vict. c. 125, sec. 22, which set at rest a question which had for many years agitated Westminster Hall. "A party producing a witness shall not be allowed to impeach his credit by general A party cannot impeach his own witness.

evidence of bad character, but he may, in case the witness shall, in the opinion of the judge, prove adverse, contradict him by other evidence, or by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony: but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement" (a). Such two statements need not be directly and absolutely at variance. *Jackson v. Thomason*, 31 L. J. Q. B. 11.

This rule is confined to courts of civil procedure. See *R. v. Williams*, 6 Cox, C. C. 343; 2 Russ. C. & M. 897; as to criminal cases, see 28 Vict. c. 18, sec. 4, 5; *R. v. Riley*, 4 F. & F. 964; *R. v. Wright*, *ib.* 967.

Cross-ex-
amination.

The exercise of the right of cross-examination is an efficacious test for the discovery of the truth: and it is not easy for a witness, however artful, to impose fabricated evidence embracing circumstances to which a cross-examination may not extend. Gr. Evi. §. 446.

On this subject *Alison* remarks, that where a witness is prevaricating or concealing the truth, it is seldom by intimidation or sternness of manner that he can be brought to let out the truth. The most effectual method is to examine rapidly and minutely, as to the number of subordinate and apparently trivial points in his evidence, concerning which there is little likelihood of his being prepared with falsehood ready made; and where such a course of interrogation is skilfully laid, it is rarely that it fails in exposing perjury or contradiction in some parts of the testimony, which it is desired to overturn. *Alison's Pract.* 546, 547.

The wit-
ness must
be sworn
to be cross-
examined.

To entitle the opponent to the right of cross-examination the witness must have been sworn. If he be merely called on a sub. duce. tecum for the producing a document, and is not sworn, he cannot be cross-examined. *Summers v. Moseley*, 2 Cr. M. 477; *Rush v. Smith*, 1 C. M. & R. 94; *Griffith v. Ricketts*, 7 Hare. 300. So if sworn by mistake and examination not substantially begun. *Rush v. Smith (sup.)*; *Wood v. Mackinson*, 2 M. & Rob. 273, Coleridge, J. But if the witness be intentionally called and sworn, and is a competent witness, although the party calling him has declined to ask a question, the other side may cross-examine him: *Wood v.*

(a) This clause is adopted from the New York Civil Code, secs. 1845, 1848.

Mackinson (sup.); *Phillips v. Eames*, 1 Esp. 357. (Lord Kenyon, C. J.), *R. v. Brooke*, 2 Stark. R. 472 (Lord Tenterden, C. J.)

In general, leading questions may be put in cross-examination (a), but some restriction should be put on this, where the witness betrays what Mr. Taylor terms “a vehement desire” to serve the cross-examining party (b). (Tay. Evi. §. 1228, 2nd ed.) Questions cannot be put on an assumption of facts as proved which have not been proved; or that particular answers have been given contrary to the fact. *Hill v. Coombe* and *Handley v. Ward* (cited 1 St. Evi. 188, note n. Abbott, C. J.).

Leading questions in cross-examination.

The questions put in cross-examination must be in respect to facts relevant to the issue, and cannot otherwise be put for the mere purpose of impeaching his credit: but if put and answered, the answer will be *conclusive*. See *Tennant v. Hamilton*, 7 Cl. & Fin. 122, H. L.

The point in issue must be adhered to.

The answers to questions tending to impeach the character of a witness—first, need not be answered; and if answered (being irrelevant) must be taken as conclusive and cannot be contradicted. *R. v. Watson*, 32 How. St. Tr. 486, 495; 2 Stark. R. 149; *Atty.-Gen. v. Hitchcock*, 1 Ex. R. 93, 94, per Parke, B., 103, 104, per Alderson, B.

Impeaching character.

But if the question be whether or not the witness has been convicted of any felony or misdemeanour, a former conviction may be put in to contradict him. Com. Law Proc. Act, 1854, sec. 25.

It was laid down in *The Queen's Case* that where a witness was to be contradicted by a statement made by him in some letter or other writing, the document must be produced as his evidence, and read, in order to found questions upon it. “This was,” said Lord Brougham (c), “excluding one of the best tests by which the memory and integrity of a witness could be tried.” Now the rule of law is provided by the Common Law Procedure Act, 1854, secs. 24, 103, whereby a witness may “be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the cause, without such writing having been shown to him; but if it is intended to contradict such witness by the writing, his attention must,

Contradictory statements made by witness in writing.

(a) Leading questions in cross-examination are not allowed in Scotland: Burnett, Cr. Law, c. 18, 465; 24 How. St. Tr. 660, n.

the discretion in prohibiting such questions; *Moody v. Rowl*, 17 Pick. 498. Cited in Tay. Evid. §. 1288, 2nd ed.

(b) In America a judge has

(c) Speech on Law Reform.

before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him : provided always, that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection ; and he may thereupon make such use of it for the purposes of the trial as he shall think fit (*a*).”

Impeach-
ing the
credit of
the mother
in an
affiliation
case.

Where questions are put to the mother of a bastard child in an affiliation appeal as to whether she had had illicit connection with some other man than the putative father, if the connection is such as that another might be the father of the child, the mother may be contradicted by independent testimony : but otherwise the questions would be irrelevant, and the answers given would be conclusive (*b*). See *Garbett v. Simpson*, 32 L. J. M. C. 186 ; 8 L. T. 423 ; *R. v. Holmes and Another*, 41 L. J. M. C. 12.

But the witness's testimony may be impeached by evidence disproving the facts stated by him as are material to the issue ; or of statements made inconsistent with former testimony ; or evidence may be adduced reflecting on his character for veracity. But this class of evidence must be confined to his *general* reputation, and not refer to *particular* facts. *R. v. Rookwood*, 13 How. St. Tr. 210, Sir Thomas Trevor (in arg.) Attorney-General ; *R. v. Layer*, 16 How. St. Tr. 285, *per* Pratt, C.-J. ; *Penny v. Watts*, 2 De Gex & Sm. 501, 527, 528. To refer to particular facts would be raising immaterial and collateral issues : *R. v. Rookwood* (*sup.*), *per* Lord Holt, C.-J. ; and see secs. 1324, 1325, and notes, Tay. Evi. 2nd ed.

Re-examin-
ation.

The re-examination will be confined to such matters as have been cross-examined to : and if irrelevant questions have been answered, and not struck out of the judge's notes, they may be fully re-examined upon. See *Blewitt v. Tregunning*, 3 A. & E. 554, 565, 581, 584.

[For particular evidence in respect of the several matters in this work, reference is made to the articles under each title.]

(*a*) See the 2nd report of the Common Law Commissioners, pp. 19—21.

(*b*) Should the court of sessions have allowed evidence to be

admitted to contradict the *irrelevant* replies, perjury may be assigned on such evidence if false : *R. v. Gibbons*, 31 L. J. M. C. 98 ; 5 L. T. 805.

EXCISE.

See "Ale-houses;" "Weights and Measures."

By the Customs Consolidation Act, 1876, 39 & 40 Vict. c. 36, s. 284, for the purpose of construing the Customs Acts, "*county*" shall mean any city, county of a city, or town, borough or other magisterial jurisdiction; and "*justice*" shall mean and include justice of the peace, county court judge, recorder, and any other magistrate in the United Kingdom, &c. Definitions.

Under 7 & 8 Geo. 4, c. 53, s. 65, the recovery of any penalty imposed in relation to the revenue of excise where the offence has been committed within the limits of the chief office of inland revenue in London, as defined by sec. 14, would be proceeded for before three or more commissioners of the inland revenue, with an appeal to the commissioners of appeal, 7 & 8 Geo. 4, c. 53, s. 82, and afterwards to the the Barons of Exchequer [see Sup. Ct. of Jud. Act, 1875, s. 21; Or. 1875, LXII.; 44 & 45 Vict. c. 68; Or. in Council Nov. 27, 1880], 4 & 5 Vict. c. 20, s. 26. Where prosecution before commissioners.

The limits of the commissions include the cities of London and Westminster, the borough of Southwark and suburbs thereof, and parishes within the weekly bills of mortality, and the parishes of St. Marylebone and St. Pancras, Middlesex. 7 & 8 Geo. 4, c. 53, s. 14, and 12 & 13 Vict. c. 1, s. 5.

Since the 30th June, 1852, however, a concurrent jurisdiction has been conferred on the metropolitan magistrates (*a*) under 15 & 16 Vict. c. 61, s. 1, and the commissioners have practically ceased to exercise their powers under the statute.

The metropolitan magistrate exercising a concurrent jurisdiction with the commissioners, no appeal to the quarter sessions will lie from their decisions; but the appeal will be to the commissioners of appeal, and then to the "Barons" of the Exchequer, as would be the case in an appeal from the commissioners.

Where the offence has been committed, or the person committing it is found, or the goods, commodities or chattels seized in any part of the kingdom out of the limits of the chief office, the information must be exhibited before a justice of the peace for the county, &c., or place wherein the offence shall have been committed (*b*), or the persons committing Before justices.

(*a*) Those informations are usually heard at Bow-street. (*b*) See, as to a justice acting for his own jurisdiction when

the same shall be found, or the goods, commodities, or chattels shall have been seized; and be heard and determined by any two or more justices of such county, &c., or place. 7 & 8 Geo. 4, c. 53, s. 65.

General provisions as to local jurisdiction.

As to a justice acting in a local jurisdiction, see The Summary Jurisdiction Act, 1879, sec. 46. In a detached part of another county surrounded in whole or in part by the county for which the justice acts, see 2 & 3 Vict. c. 82, s. 1; 7 & 8 Vict. c. 61; 11 & 12 Vict. c. 42, s. 7.

Officer of excise not to act as a justice.

No officer of excise, or trader subject to the excise laws, can act as such justice on an excise information. 7 & 8 Geo. 4, c. 53, s. 68.

The information.

No proceeding can be taken except on an information, and which can only be laid (excepting in cases of proceedings upon immediate arrest) before a justice of the peace having jurisdiction, by order of the commissioners of excise or customs, and in the name of the attorney-general; otherwise the proceedings will be null and void. 7 & 8 Geo. 4, c. 53, s. 61; see also 39 & 40 Vict. c. 36, s. 256.

Limit of time.

The time for laying the information is limited to six months after the offence under 11 & 12 Vict. c. 43, s. 11, and c. 118, s. 3; and three years by 39 & 40 Vict. c. 36, s. 257.

When to be on oath.

The information need not be made on oath unless a warrant is to issue on it in the first instance. 11 & 12 Vict. c. 43, s. 10.

Notice to defendant.

Notice of the information must be given to the defendant within a week after its exhibition. 4 & 5 Will. 4, c. 51, s. 19.

Formation of the information.

The jurisdiction of the acting justice should be properly described. See *R. v. Dobbyn*, 2 Salk. 474; and it was in the older cases held that the date should be accurately stated showing the proceedings had been taken in due time. *R. v. Fuller*, 1 Lord Raymond, 510; *R. v. Kent*, 2 *ib.* 1546; but it was recently held that it is not necessary to state in the information the offence was committed within the six months. *Wray v. Toke*, 17 L. J. M. C. 183; 12 Q. B. 492; see also *R. v. Stevenson*, 2 East, 362; nor need the precise day be proved on which the offence was committed; *R. v. Simpson*, 10 Mod. R. 248. See 39 & 40 Vict. c. 36, s. 223.

Exemptions, provisos, excuses, or qualifications need not be specified or negatived. 11 & 12 Vict. c. 43, s. 14; 42 & 43

within an adjoining city, &c., having exclusive jurisdiction, 11 & 12 Vict. c. 43, s. 6; *ib.* c. 42,

s. 6. Where a county justice has concurrent jurisdiction in a city, see 39 & 40 Vict. c. 36, s. 231.

Vict. c. 49, s. 39 ; (2) and if specified or negatived no proof in relation thereto will be required (*ib.*). Where, however, an act done under certain circumstances might be lawful, but if done otherwise it would be unlawful—the information should negative these circumstances, and also in the proof. *Fletcher v. Calthrop*, 6 Q. B. 880 ; 14 L. J. Q. B. 49.

Where any particular fact or circumstance is an essential ingredient to the constituting the offence, such fact or circumstance should be set out in the information : as, where a person keeps a licensed house open beyond the allowed hours, the time the house was kept open should be alleged. *Newman v. Earl Hardwicke*, 8 A. & E. 124 ; see also *R. v. Parrott*, 2 M. & S. 378. As to where it may be necessary to specify some particular act which, being prohibited had been committed, or being enjoined, had been omitted.

All statements in the information should be made without ambiguity, and must distinctly show the defendant has committed, or omitted, some act on which a penalty is imposed by the Acts. See *R. v. Jukes*, 8 T. R. 536 ; *R. v. Trelawney*, 1 T. R. 222 ; *Atty-Gen. v. Dyer*, 2 C. & M. 664.

An information in the disjunctive or alternative is bad. *R. v. Morley*, 1 Y. & J. 221 ; *R. v. North*, 6 D. & R. 143 ; *Ex parte Payne*, 5 B. & C. 251. The alternative may, however, be mere surplusage, as using the term “bartering or selling,” under 16 & 17 Vict. c. 67, s. 15, might be used to avoid a technical objection whether there was a sale or not ; see *Bruce v. Linton*, 34 (Scottish) Jurist, 80. Nor can there be more than *one* offence charged ; 11 & 12 Vict. c. 43, s. 10. There may be a cumulative statement of *one* offence. In *Newman v. Bendsyshe*, 10 A. & E. 11 ; 2 P. & D. 340, it was, however, held that a charge for keeping a house open for the sale of beer, *and* selling beer, *and* suffering it to be drunk on the premises—was charging *three* offences. Charging the “keeping and using a dog *and* also a gun to kill and destroy game,” Lord Kenyon held constituted only one offence, as the defendant being in pursuit of game could only be convicted of the one offence on the same day. *R. v. Lovett*, 7 T. R. 152. On the same principle, where a defendant “received and took into, and had in his custody and possession a large quantity of liquorice,” it was only as one offence. *Lockwood v. The Atty.-Gen.*, 10 M. & W. 464.

There are some specific changes which should be specially described, although to describe the offence in the words of the Act, or in similar words, would be sufficient : see 42 & 43 Vict. c. 49, sec. 39 (1). Such as :—That the de-

defendant sold beer by retail without having a licence in force authorising him so to do," 23 & 24 Vict. c. 113, s. 37 :— "That the defendant used and carried a gun without having a licence in force under the Act," 33 & 34 Vict. c. 57, s. 7 :— "That the defendant did deal in plate without a proper licence in that behalf," 30 & 31 Vic. c. 90, s. 3.

Where the charge is the offering a bribe to a custom-house or excise officer, the value of the bribe need not be stated: *R. v. Gamble*, 16 M. & W. 384; 16 L. J. M. C. 149.

In such an information it is no variance or misstatement of the officer's name if it be the name he is usually known by: *Attorney-General v. Hawkes*, 1 C. & J. 121; 1 Tyr. 3.

No objection on defect of form.

No objection can be taken on defect of form either in the information or summons: 7 & 8 Geo. 4, c. 53, s. 73; 11 & 12 Vict. c. 43, ss. 1—3. Yet great care should be taken in framing the information to meet the material charge, as it is the *very foundation* of the jurisdiction of the justices. See *Cave v. Mountain*, 1 M. & G. 257; *Carpenter v. Mason*, 12 A. & E. 629; *R. v. Bolton*, 1 Q. B. 66; *Blake v. Beech*, 1 Ex. D. 320; 36 L. T. 723; 45 L. J. M. C. 111; *Grepps v. Durbon*, 1 Sm. L. C. (8th ed.), 730 (*in notis*). See 39 & 40 Vict. c. 36, s. 228.

The summons.

Any one justice may receive the information, and issue the summons; and after the hearing before two justices, any one of the said justices may issue his warrant to enforce the conviction, 7 & 8 G. 4, c. 53, s. 7; 4 & 5 W. 4, c. 51, s. 19.

The proceedings will be valid notwithstanding the death or absence of the justice issuing the information, 7 & 8 G. 4, c. 53, s. 7; 4 & 5 W. 4, c. 51, s. 19; or his ceasing to hold office. S. J. A. 1879, s. 19.

Service of the summons (b).

Under 4 & 5 Will. 4, c. 51, s. 19, the summons must be served on every defendant within a week after exhibiting the information, and ten days at least before the hearing (a). But where the information is exhibited for the recovery of double the amount of duty neglected to be paid (4 & 5 Will. 4, c. 51, s. 19), it will be sufficient for the summons to be served twelve hours at the least before the time appointed for the hearing.

The service will be effected by leaving the summons at

(a) These days are exclusive of the day on which the information was exhibited and the day appointed for the hearing: *Hardy v. Ryle*, 9 B. & C. 603; *Young v.*

Higgin, 6 M. & W. 49; *R. v. Shropshire*, 8 A. & E. 673.

(b) Also 39 & 40 Vict. c. 36, s. 227.

the party's place of business, or place where the offence was committed; or at his residence, or with his wife, child, or servant, the same being directed to the defendant by his right or assumed name, or where the offence had been committed or discovered in transit, or seizure made in transit; and if the place of business or residence of the offender be unknown, it will be sufficient to affix the summons in some conspicuous part of the nearest office of the inland revenue where such offence had been committed, or discovered, or seizure made, directed to the offender or offenders, by his or their right or assumed name, if known, and if not known, without any name or names (sec. 19).

In the case of a traveller for an unlicensed wine merchant incurring a penalty under 30 & 31 Vict. c. 90, s. 17, and the place of business is unknown, the summons may be left at the house where the person solicited orders. (Same, 17th sec.)

Service on a public company will be made by leaving the summons, or sending it through the post in a prepaid letter, addressed to the company at their registered office (a), 25 & 26 Vict. c. 89, s. 62. Service of the summons on a company.

The service of a summons on a person in custody is to be effected by giving it to the keeper of the prison, 7 & 8 Geo. 4, c. 53, s. 77. On a person in custody.

For service in another jurisdiction the summons need not be indorsed by a justice of such other jurisdiction. No indorsement required.

Under 24 & 25 Vict. c. 91, s. 46, the commissioners are to obtain a writ of *habeas corpus* to authorise the appearance of the defendant prisoner to be brought up on the summons to answer the charge against him; and without his appearance proceedings will be stayed. Previously, under 7 & 8 Geo. 4, c. 53, s. 77, the hearing could not have been proceeded with on the non-appearance of the defendant while in custody. Obtaining a *habeas corpus* when defendant in custody.

Before proceeding *Ex parte*, the justices must be satisfied the summons has been brought to the defendants' notice: *R. v. Smith*, L. R. 10 Q. B. 608; 23 W. R. 523. Proceedings *ex parte*.

The service of the summons may be proved (on oath) in court by the person who served it, 11 & 12 Vict. c. 43, s. 13; or by declaration before a justice, commissioner to administer oaths, or a clerk of the peace, or registrar of a county court, 42 & 43 Vict. c. 49, s. 41; 44 & 45 Vict. c. 24, s. 4.

(a) This mode of service will apply to service of all other notices.

Proof of
the infor-
mation.

The avowment in the information that it had been exhibited under the order of the commissioners will be sufficient proof of that fact, 7 & 8 Geo. 4, c. 53, s. 71; or the production of the letter of instruction to lay the information will be evidence thereof, *ib.* sec. 72; and see 39 & 40 Vict. c. 36, s. 262; and will be proof of the statements therein contained generally until the contrary be proved, 42 & 43 Vict. c. 49, s. 41; also 7 & 8 Geo. 4, c. 53, s. 72; 39 & 40 Vict. c. 36, s. 262.

Proof of
informant
being an
excise
officer.

The fact of an officer of excise actually keeping an office of inland revenue, will be evidence of his official position, 26 Geo. 3, c. 77, s. 12; 7 & 8 Geo. 4, c. 53, ss. 17, 71; and see 39 & 40 Vict. c. 36, s. 261.

Witnesses.

Officers of revenue, and others interested in the penalties, may be witnesses: *ib.* sec. 75. The defendant is not rendered a competent witness by 14 & 15 Vict. c. 99, s. 2: *Attorney-General v. Rudlop*, 10 Ex. 84; 23 L. J. Ex. 240.

See 39 &
40 Vict. c.
36, s. 259.

The parties should be fully prepared with *all* their witnesses at the hearing at petty sessions, and they should be either examined or tendered as witnesses, as those only so examined or tendered can be heard on an appeal to the quarter sessions: *post*, p. 239 (a).

The hear-
ing.

An officer of the inland revenue may conduct the prosecution, 15 & 16 Vict. c. 61, s. 3; or a solicitor or council, 11 & 12 Vict. c. 43, s. 3. The officer need not be the one laying the information; and in case of an appeal, the officer conducting the case may be the appellant: *R. v. Woodrow*, 15 M. & W. 404; 16 L. J. M. C. 1; 4 & 5 Will. 4, c. 51, s. 23.

Where there is a joint information, the justices may hear the charges separately, at their discretion. Each may be liable to the whole penalty; the convictions should be separate: *R. v. Cridland*, 7 E. & B. 853; 27 L. J. M. C. 28; *R. v. Littlechild*, *R. v. Heslop*, L. R. 6 Q. B. 293; 40 L. J. M. C. 137; 24 L. T. 233; see 39 & 40 Vict. c. 36, s. 222.

As to the taking the defendants' plea, and proceeding thereon, see 11 & 12 Vict. c. 43, s. 14.

Where
wrong
offence
alleged;
no amend-
ment.

Where the information alleges one offence, but the evidence shows it was another which was committed, although of a similar class, the information cannot be supported, nor can it be amended: *Martin v. Pridgeon*, 1 E. & E. 778; 28 L.

(a) A witness summoned and not attending is liable to a penalty of £50: 7 & 8 Geo. 4, c. 53, s. 74. On refusing to be

examined he may be committed for 7 days: 11 & 12 Vict. c. 43, s. 11.

J. M. C. 179; 7 W. R. 412; *R. v. Brickhall*, 33 L. J. M. C. 156; 10 L. T. 385.

The defendant may, however, waive the objection without further objections: *Turner v. the Postmaster-General*, 5 B. & S. 756; 34 L. J. M. C. 10; 11 L. T. 369; 13 W. R. 89.

Allegations in the information not necessary for the offence may be treated as surplusage.

Surplusage in information.

The Court will enquire only into the real merits of the information without any investigation as to the mode of seizure; the form or manner of making the same, will be taken to have been as alleged in the information without any evidence thereof: 7 & 8 Geo. 4, c. 53, s. 64.

Merits of case only enquired into.

The ordinary rules of evidence will, in most instances, apply and be observed. The law, however, in favour of the Crown in revenue cases, shifts the burden of the proof of the exemption in the first instance on the defendant; as it will be for the defendant to show he has paid the necessary duty on goods seized, and of which he is the proprietor or claimant. See 7 & 8 Geo. 4, c. 53, s. 76. On a seizure of spirits, proof that the spirits correspond with the permit is on the defendant: 43 & 44 Vict. c. 24, s. 105 (9). As to the payment of a dog licence, the age of the dog, see 30 & 31 Vict. c. 5, s. 8; 41 & 42 Vict. c. 15, s. 19; or whether the licence was obtained within the prescribed period, 32 & 33 Vict. c. 14, s. 27; or as to the sale of beer, see 23 & 24 Vict. c. 113, s. 36; 6 Geo. 4, c. 81, s. 26; or as to the quality of any article of plate, see 30 & 31 Vict. c. 90, s. 5.

The evidence where *onus probandi* on defendant.

Neither allegation or proof of the negative exemption from duty lies on the informant: 11 & 12 Vict. c. 43, s. 14; 42 & 43 Vict. c. 49, s. 39 (2).

Goods being seized in the possession of the master of a vessel employed by the defendant is sufficient evidence of the master's agency to make the defendant liable: *Attorney-General v. Tomsett*, 2 C. M. & R. 170; 5 Tyr. 514. The mere hiring the ship will not make the party liable, as held in a case under 6 Geo. 4, c. 108, *Attorney-General v. Kenniffeck*, 2 M. & W. 715.

Seizure of goods.

A defendant by allowing a particular course to be pursued in his factory as to the duties to be paid may be estopped from disputing such mode: *Attorney-General v. Pemberton*, 1 McClell. 634.

Importing goods of one denomination concealed in those of another is an offence, 39 & 40 Vict. c. 36, s. 67; *Budenburg v. Roberts*, 35 L. J. M. C. 235; L. R. 1 C. P. 575, decided

under 22 & 23 Vict. c. 37, s. 6. And it would not be necessary that such goods be liable to a customs' duty (*ib.*)

Forfeiture
of ship
or boat.

The magistrates are to inquire whether the ship or boat is liable to forfeiture for having prohibited articles on board and on account of which the ship may be condemned as forfeited. In such a case he has jurisdiction to impose a penalty on each person on board to the extent of £100: *Weale v. Brown*, 4 Hurl. & Colt. 705, decided under 18 & 19 Vict. c. 96, s. 28; see now 39 & 40 Vict. c. 36, s. 179.

No inquiry
allowed as
to the in-
former.

The rule of public policy which prevents a witness being asked questions which might disclose the informer, if he be a third person, applies equally to questions whether or not the witness himself was the informer: *Attorney-General v. Briant*, 15 M. & W. 169; 15 L. J. Ex. 265; *R. v. Akers*, 6 Esp. 125 (n.); *Home v. Bentinck*, 2 Brod. & B. 162 (p.).

Conviction
a bar to
any subse-
quent in-
formation.

A dismissal on the merits will be a bar to any subsequent information in the same matter, and against the same person: *Forster v. Hull*, 20 L. T. 482; the justice's certificate will be proof of the bar. 11 & 12 Vict. c. 43, s. 14; and so also will be the proof of the adjudication: *R. v. Hutchins*, 5 Q. B. D. 353; 49 L. J. M. C. 64.

The fines.

On a first offence the Court of petty sessions may reduce the amount: 42 & 43 Vict. c. 49, s. 4. On a subsequent offence (except where there is a provision that no mitigation shall be made) a mitigation may be made to an amount not less than one-fourth part of the fine: 7 & 8 Geo. 4, c. 53, s. 78.

The exceptions are—1st. Fines of double the value of the duties neglected to be paid. 2nd. Fines recoverable on arrest, followed by committal to prison in default of immediate payment, except where a special mitigation is given (*a*).

Justices to
return
names of
witnesses
examined
or tendered
for exami-
nation to
quarter
sessions.

It is recited in 4 & 5 Will. 4, c. 51, s. 24, that great inconvenience had been experienced by justices deciding on alleged defects in information, and dismissing the same without any examination of witnesses, whereby the remedy of appeal had been lost; it was enacted, that where the justices, before whom any information shall be exhibited, shall dismiss such information without examination of witnesses, or shall refuse to examine any witness produced on the hearing of any information, the several witnesses refused to be examined shall be tendered to the said justices for examination on the part of the informer or defendant,

as the case may be ; and the said justice shall, on ascertaining the witnesses so tendered for examination to be present, cause their names to be taken down in writing, and shall transmit the same with the information and judgment to the quarter sessions ; and the several witnesses so tendered for examination, and whose names shall be so transmitted, shall on the hearing of the appeal be examined in the case, although not examined before the commissioners or justices on the original hearing and judgment.

Notwithstanding any special provisions to the contrary in the statutes relating to H.M. Inland Revenue and Customs, the Summary Jurisdiction Acts will apply to all information, complaints, and other proceedings before a court of summary jurisdiction ; Summary Jurisdiction Act, 1879, s. 53. This section will not apply to the sections on appeal ; and the question of the appeal not being specifically referred to in the Summary Jurisdiction Act, 1879, the Excise Acts are not interfered with in that respect, and the appeal clauses in those Acts will still have to be followed.

The appeal from a decision on an excise information to the court of quarter sessions, whether made by the informant or the officer appearing to conduct the prosecution (*R. v. Woodrow*, 15 M. & W. 404 ; 16 L. J. M. C. 122, *supra* ; 4 & 5 Will. 4, c. 51, s. 23), or by the person against whom the information is laid, and being aggrieved by the decision, may be made under the provisions of 7 & 8 Geo. 4, c. 53, s. 82.

By 7 & 8 Geo. 4, c. 53, s. 82, in case any officer who shall exhibit any information, or any person against whom any information shall have been exhibited, or who shall appear and claim any goods, &c., alleged to be forfeited in any information exhibited before any justice, &c., shall feel aggrieved by the judgment given thereon, the dissatisfied party, upon giving such notice as is required by sec. 83, may appeal therefrom to the justices in quarter sessions ; or by 4 & 5 Will. 4, c. 51, s. 23, if there be not twenty days between the time of the judgment being given and the general quarter sessions, then to the general quarter sessions next after the expiration of the period of twenty days from the giving of such judgment ; and the justices at such sessions, upon being served with such notice, are authorised and required to hear, adjudge, and finally determine such appeal. And defects of form found on the information may be amended by the court.

The notices required by sec. 83 are that the appellant

shall *at and immediately (a)* upon the giving of the judgment appealed against, give notice in writing of such appeal to the justices of the peace from whose judgment such appeal shall be made, and also to the adverse party or parties on such appeal; and shall lodge such appeal with the clerk of the peace. And no such appeal shall be heard unless the appellant shall, within one week at least before such appeal is to be finally adjudged and determined, give notice in writing to the adverse party or parties on such appeal of the time and place where such appeal is to be heard.

It has been held that a service of the notice of appeal, *in the presence of the justices* or their clerks, is good service on them; *R. v. Eaves*, L. R. 5 Ex. 75; 39 L. J. M. C. 70; 21 L. T. 829; otherwise the service must be personal, see *Curtis v. Buss, Ex parte Curtis*, 3 Q. B. D. 13; 47 L. J. M. C. 35; 25 W. R. 210; or at the dwelling-house of the justice; *R. v. Yorkshire N. R.*, 7 Q. B. 154; see also *R. v. Cheshire*, 11 A. & E. 139; *R. v. Bedfordshire, ib.* 134 (*ante*, pp. 73, 133).

The notice on the respondent must be served on him personally, or at his place of abode; 4 & 5 Vict. c. 20, s. 30. When the defendant appeals he must serve the notice on the officer who exhibited the information (*b*); a service on a clerk of the Inland Revenue Office will not suffice; *R. v. Eaves*, L. R. 5 Ex. 75; 21 L. T. 829.

By officer
although
not the
informant.

The notice of appeal may be given by the officer of the inland revenue attending and conducting the proceedings on the part of the prosecution, although he may not be the officer named in the information and exhibiting the same. 4 & 5 Will. 4, c. 51, s. 23.

Appellant
on conviction
to deposit
penalty;
or goods
seized to
be retained
by excise
until ap-
peal deter-
mined.

On appeal against a conviction, the appellant must within three days next after the judgment, deposit with the commissioners of inland revenue, or the collector, or the supervisor where the information was exhibited, the amount of the penalty in which he had been convicted, or the amount to which the same had been mitigated; or where goods, &c., had been seized, such goods, &c., will remain with the

(a) Whether this has been reasonably complied with is for the sessions—there should be no delay: in fact, the parties should at once be prepared to give formal notice: see *R. v. Berkshire*, 4 Q. B. D. 469.

(b) The officer who conducts the prosecution may be the appellant; the Act does not say he may be the respondent. The notice should be served on the person, therefore, who laid the information.

Excise until final judgment on the appeal. 7 & 8 Geo. 4, c. 53, s. 83.

Notice of the trial of appeal must be given seven clear days before the appeal is to be heard, or it cannot be heard. 4 Vict. c. 20, s. 30.

The appeal being made under the "past Act" the court of sessions are authorised to hear, adjudge and finally determine it. 7 & 8 Geo. 4, c. 53, s. 82; or to adjourn the hearing, 4 & 5 Will. 4, c. 51, s. 22.

The court may also amend any defect in the form of the information. 7 & 8 Geo. 4, c. 53, s. 82.

By 7 & 8 Geo. 4, c. 53, s. 84, upon every such appeal, the court before which the appeal shall be brought, are authorised and required to rehear upon oath, and to *re-examine the same* witness and witnesses, and to re-consider the *same evidence*, and the merits of the case, whereon the original judgment appealed against shall have been given; "and they shall not examine any evidence, or any witness or witnesses, other than or different from the evidence, and the witness or witnesses which had been before examined before the justices at the trial and hearing of the information upon which the original judgment had been given; and the justices at the sessions are authorised to reverse or confirm in the whole, or in part, the judgment appealed against, or to give such new or different judgment as they in their discretion shall in that behalf think fit; and in such new or different judgment they shall have the same power of mitigation as is before given by the Act to the justices of the peace in judgments given by them." That is, the penalty may be reduced by an amount not less than one-fourth part thereof *ib. sec. 78.*

A special case may be stated for the opinion of the Court of Exchequer, now the Q. B. D. 7 & 8 Geo. 4, c. 53, s. 84, and such special case will be filed with the Queen's Remembrancer. (Reg. Gen. 128, on the Revenue side of the exchequer, 22nd June, 1860), and a copy given to the other party. The case will be set down for argument in the Q. B. D.

7 & 8 Geo. 4, c. 53, s. 85, directs that on the judgment appealed against being affirmed, it will be enforced by the justices as if there had been no appeal; and should it be reversed, and another or different judgment given, such new decision will be enforced and executed by the justices in Quarter Sessions, by whom such new judgment shall have been given.

Notice of trial.
The hearing appeal may be adjourned.

Information amended.
Only same witnesses as were examined or tendered for examination before the justices to be heard on the appeal.

Enforcement of judgment confirmed on appeal.

Under sec. 87 (*ib.*) the court may order the sale of any goods, &c. which had been seized;—and may order any money deposited by the appellant to be applied towards the satisfaction of the judgment; see also sec. 86 (*ib.*).

EXPLOSIVE SUBSTANCES.

Explosives Act, 1875. The Explosives Act, 1875, 38 Vict. c. 17, amends the law with respect to the manufacture of explosive substances and consolidates the law in reference thereto.

Where gunpowder to be manufactured. Gunpowder is only to be manufactured at a lawfully existing gunpowder factory, or one duly licensed; and the manufacture of gunpowder at an unauthorised place will subject the offender to a penalty not exceeding £100 a day, and the forfeiture of all the material for the manufacture which may be about the place; sec. 4. There can be no proceedings under this section for not providing lightning conductors (23 & 24 Vict. c. 139, now repealed Act 1875, sch. 4); *Elliott v. Majendie*, L. R. 7 Q. B. 429; 41 L. J. M. C. 147; 26 L. T. 504; 20 W. R. 721.

Where kept. No gunpowder (except for private use or where in transit by a carrier) shall be kept otherwise than in a licensed factory or one lawfully existing, or in a licensed or lawfully existing magazine, or registered premises. And where gunpowder is so kept in an unauthorised place, the person guilty will be liable to a forfeiture of all the powder, and to a penalty of not exceeding two shillings for every pound of powder so kept; sec. 5.

Licences. New manufactories are required to be licensed (sec. 6), and the keeping of gunpowder under this section applies only to the manufacturer, and not the retail dealer purchasing from the manufacturer; *Webley v. Woolley*, L. R. 7 Q. B. 61; 41 L. J. M. C. 38; 25 L. T. 629.

Section 9 makes regulations for the use of the factories and magazines in accordance with the licence, for breach of which regulations a penalty of, for the first offence, £50 may be inflicted; for the second or subsequent offence £100, and an addition of £50 for every day during which the breach may continue.

Section 10 enacts general rules to be observed in the gunpowder factory, for breach of which a penalty not exceeding £10 may be inflicted; and in addition, on a second offence, £10 for every day during which the breach may continue.

Section 17 provides general rules to be observed in every gunpowder store, for breach of which a penalty not exceeding £10, and in addition, in case of a second offence, £10 for every day during which the breach continues, with forfeiture of the gunpowder.

There will be no appeal on a conviction under this clause, unless the penalty with forfeiture be over £20 (see appeal clause). No appeal, unless penalty over £20.

Section 22 provides general rules to be observed with respect to registered premises, regulating the amount of gunpowder which may be kept there, and the mode in which it should be kept; for the non-compliance with which the material may be forfeited, and the occupier be liable to a penalty of not exceeding two shillings for every pound of gunpowder on the premises in which the offence was committed. An appeal under this section is subject to the observation before made on sec. 27. And similarly there may be an appeal under sec. 33 on a breach of the general rules to be observed with regard to the packing of gunpowder for conveyance, for which a penalty not exceeding £20 may be inflicted, with forfeiture of the material. Registered premises.

As regards the Government supervision, sec. 55 gives the inspectors especial powers to make such examination and enquiry as may be deemed necessary to ascertain whether the Act is complied with, and every occupier, his agents and servants, shall furnish the means required for every such examination and enquiry. Government supervision.

Any person failing to permit the inspector to make the enquiries, or failing to comply with any requisition of such inspector in pursuance with the section, or who in any manner obstructs the inspector in the execution of his duty, will be liable to a penalty not exceeding £100 for each offence.

The failing to admit any inspector or authorised officer demanding to enter building, carriage, boat, or ship, in pursuance of sec. 73, when there is reasonable cause to believe an offence under the Act is being therein committed, or in any way obstructing the officer in the execution of such duty, will be liable to a penalty of not exceeding £50, and the explosives to be forfeited.

Under sec. 93, if any person feels aggrieved by any order or conviction under the Act by which the sum adjudged to be paid, including costs, and including the value of any forfeiture, exceeds £20, the party so aggrieved may appeal therefrom to the quarter sessions in manner provided with Appeal.

respect to an appeal to quarter sessions by section 110, 24 & 25 Vict. c. 96 (The Larceny Act). See also sec. 32 of the Summary Jurisdiction Act, 1879 (*infra*), giving the option to appeal under that Act.

The Court of Summary Jurisdiction mentioned in the Act is to be composed of two or more justices; secs. 94, 108.

FINES, RECOGNIZANCES, AND ESTREATS.

The recognizance.

The performance of certain conditions which may be imposed by the law are secured by means of compelling the party to enter into recognizances which may be with or without security; see *R. v. The Mayor of Dover*, 5 Tyr. 279; 1 Cr. & M. 726. The estreat of the recognizances is the result of the non-performance of the imposed conditions. The non-performance of the obligation must be complete; see *R. v. Ely JJ.*, 25 L. J. M. C. 1; 5 E. & B. 489 (*a*).

Fines to be certified to the clerk of the peace.

By 3 Geo. 4, c. 46, s. 2, it is enacted that all fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or of any of them, set, imposed, lost, or forfeited (*b*) before any justice or justices of the peace (unless directed by Act of Parliament to be otherwise levied, &c.) *are to be certified by them to the clerk of the peace of the county or town clerk of the city, borough, or place, in writing, containing the names and residences, trade, profession, or calling of the parties, the amount forfeited by each, and the cause of each forfeiture, signed by such justice or justices on or before the ensuing general or quarter sessions of the county, city, borough, or place respectively, and that the clerk of the peace or town clerk is to copy (c) on a roll such fines, &c., together with all fines, &c., imposed or forfeited at the court of general or quarter sessions, and within the time fixed by such court, not exceeding twenty-one days after the adjournment of the court, to send a copy of the roll with a writ of distringas and capias, or fieri facias and capias, according*

(*a*) In *R. v. Ely*, Coleridge, J., states that the Statute 4 Geo. 4, c. 46, "contemplates two cases; one, where the recognizances are forfeited before justices out of sessions, who are to give information of them to the clerk of the peace; the other, where the forfeiture takes place at the quarter

sessions, of which the clerk of the peace takes notice himself."

(*b*) See *R. v. Yorkshire W.R.*, 7 A. & E. 583; *R. v. Ely*, 5 E. & B. 489.

(*c*) See *R. v. Yorkshire (supra*, n. 1); *Wildes v. Morris*, 32 L. J. M. C. 4.

to the form and effect in the schedule (A.) to the act, *to the sheriff of the county, or sheriff, bailiff, or officer of the city, borough, or place, having execution of process therein respectively*, which shall be the authority of the sheriff, &c., for proceeding to the *immediate* levying and recovering of *such fines, &c.*, on the goods and chattels, or in default of goods, &c., for taking the bodies of such persons; such persons to be lodged in gaol until the next sessions to abide the judgment of the court.

By 3 Geo. 4, c. 46, s. 3, the clerk of the peace will make oath in the form there prescribed that his roll of fines, issues, amerciaments, recognizances, and forfeitures are truly set forth; by sec. 8, the sheriff at the opening of the ensuing sessions will make his return, and state on the back of the roll what he has done in execution of process; and which return the clerk of the peace will transmit to the Lords of the Treasury.

By 7 Geo. 4, c. 64, s. 31, it is enacted, that in every case where any person bound by recognizance for his appearance, or for whose appearance any other person shall be so bound to prosecute or give evidence in any case of felony or misdemeanour, or to answer for any common assault, or to articles of the peace, shall therein make default, the officer of the court by whom the estreats are made out is to prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which every such person or his surety was so bound, with the residence, trade, profession and calling of every such person and surety, distinguishing principals from sureties on the list, and stating the cause if known, why each such person has not appeared, and whether by the non-appearance the ends of justice have been defeated or delayed, and is before any such recognizance shall be estreated to lay such list, if at a court where a recorder or other corporate officer is judge, before such recorder or other corporate officer, if at a session of the peace, before the chairman or two other justices of the peace who shall have attended such court, *who are respectively required to examine such list, and to make such order touching the estreating or putting in process of any such recognizance as shall appear just*; and no officer of the court shall estreat or put in process any such recognizance without the written order of the recorder, corporate officer, chairman or justice before whom the list was laid.

Quarter sessions to examine list before estreat.

Sec. 31 enforces protection from the grievance pointed

at by the preamble to the statute, and for which at that time a remedy was requisite—the statute reciting, “that indiscriminately estreating recognizances had created great hardships.”

Issue of writ, &c.

Sec. 5 provides that where a person has given security to the sheriff for his appearance at the next quarter sessions, and to abide the decision of the court, and such person does not appear, the court may forthwith issue a writ of *distringas* and *capias*, or *fieri facias* and *capias*, against the securities of the person so bound. 3 Geo. 4, c. 46.

Discharge under 3 Geo. 4.

And by sec. 6, the court of general or quarter sessions, before whom any person so committed to gaol, or bound to appear (a), shall be brought, is to enquire into the circumstances of the case, and shall at its discretion be empowered to order the discharge of the whole of the forfeited recognizance or sum, &c., or any part thereof; the order to be in the form or to the effect of the schedule (C.) to the Act, and to be signed by the clerk of the peace, and is to be a discharge to the sheriff, &c., on passing his accounts. Where the party has been lodged by the sheriff, &c., in the common gaol, the sessions may either remand him to the custody of the sheriff, &c., or upon his being released from the whole of such forfeited recognizance, order him to be discharged, which order is to be a discharge to the sheriff, &c., on passing his accounts. The court may award such costs, charges and expenses to be paid by either party to the other as to the court seems just and reasonable. See *Ex parte Pellow*, M'Clelland, 111; *R. v. Hawkins*, M'Clell. & Y., 27, as stated, *per Curiam*, in *R. v. West Riding JJ.*; *In re Dr. Thornton*, 7 A. & E. 590. 3 Geo. 4, c. 46.

Fines imposed by Coroners to be estreated in like manner as fines at quarter sessions.

Fines imposed by a coroner of liberties, franchises, counties, cities, and boroughs, not within 5 & 6 Will. 4, c. 76, as jurors or witnesses making default in their appearance at any inquest before him, are certified to the clerk of the peace of the jurisdiction in which such defaulter shall reside on or before the first day of the quarter sessions next after the inquest; and a copy of such certificate is to be served upon the party so fined, by leaving the same at his residence twenty-four hours at the least before the first day of the sessions. Such fines are to be copied on the rolls of the court; and the same shall be estreated, levied, and applied

(a) This order to discharge the recognizance will be confined to cases where the party had been bound over to appear at the ses-

sions, or had been committed to gaol: *Haynes v. Hayton*, 7 B. & C. 299.

in like manner, and subject to *the like* powers, provisions, and penalties in all respects, as if such fine or fines had been part of the fines imposed at such quarter sessions. 7 & 8 Vict. c. 92, s. 18 :—And every recognizance, forfeited at any inquest, holden before any coroner of any county, &c., shall be certified to the clerk of the peace of the county, &c., where the person forfeiting such recognizance shall reside, at the like time; and a copy shall be served in a similar manner, and the clerk of the peace shall likewise act, as in the case of fines certified to him under sec. 17 of 7 & 8 Vict. c. 92; 22 & 23 Vict. c. 21, s. 40.

The only relief against the fine is by appeal to the quarter sessions under s. 5, 3 Geo. 4, c. 46, giving a "bare appeal." *R. v. Hawkins*, *sup.*; see *In re Blues*, Baines' Act, *ante*, pp. 119, 121; see *post*, Sum. Juris. Acts.

The sheriff is annually to make his return of all fines, &c., Returns. to the Lords of the Treasury; and the clerk of the peace, 4 Geo. 4, c. 37, s. 4, is to make his return within twenty days from the opening of the quarter sessions.

A motion to discharge a defendant from estreated recog- Discharge nizations must be under notice to the solicitor to the trea- motion sury: *Ex parte Stowell*, 13 L. J. Ex. 328. A party denying the existence of the recognizance on which he may have been taken in execution, must traverse it in the Exchequer: *Re Tipton*, 3 Dowl. P. C. 177. A *constat* from the estreat office is also requisite: *R. v. Holdin*, 3 Tyr. 580.

The fines are payable to the treasurer of the borough; Borough see *Attorney-General v. Moore*, 47 L. J. M. C. 33, on App. fines. *ib.* 103; 5 & 6 Will. 4, c. 76, s. 126.

FISH AND FISHERIES.

Every subject has a right to fish (by common law) with Common lawful nets in a navigable tidal river, as well as in the sea: *Warren v. Matthews*, 6 Mod. 273; *Bagott v. Orr*, 2 B. & P. 472; Hale, *De Jure Maris*; Hargraves, *Law Tracts*. There is no such right where the river is made navigable by means of locks: *Mussett v. Burch*, 35 L. T. 486; *Hudson v. McCrae*, 4 B. & S. 585; 33 L. J. M. C. 65; *Hargraves v. Diddams*, L. R. 10 Q. B. 582; 44 L. J. M. C. 178. Hale considered the right of the public in fishing was co-extensive with the right of the Crown over the river for public purposes. But where there is no regular flow and re-flow of the tide, but

Common law right to fish in navigable rivers.

only an occasional damming back of the water, as at high and spring tides, or on extraordinary tides, it "comes not as to this purpose under the denomination *littus maris*." "The tidal river" means that part of the river which under ordinary circumstances is tidal and navigable as such; it is not enough to show that sometimes under unusual circumstances the river at the place where a person may be fishing is affected by the tide. In such case the jurisdiction of the justices could not be ousted: *Reece v. Miller*, 8 Q. B. D. 626; 51 L. J. M. C. 64.

Freshwater Fishery Act, 1878 (a).

41 & 42 Vict. c. 39.

Fresh-water fish defined. The term, "freshwater fish," includes all kinds of fish other than pollan, trout, or char, which live in fresh water, and except those which migrate to the open sea: Act 1878, s. 11, sub-s. 1.

Close season. The close season for fishing freshwater fish is between the 15th March and the 15th June: *ib.* sub-s. 2.

Taking fish in close season. Catching or killing freshwater fish during the close season renders the offender liable to a penalty not exceeding 40s; on a second conviction £5, with forfeiture of the fish caught and the instruments used in the taking: *ib.* sub-s. 3.

But the section will not apply to an owner of a fishery where trout, char, or grayling are preserved.

Or person angling with leave (*b*).

Or person taking the fish for a scientific purpose; or for use as bait.

A person selling freshwater fish during the close season will be liable to a fine not exceeding 40s. (sub-s. 4).

On a second or any subsequent conviction under this (11th) section the person convicted will be liable to a fine not exceeding £5 (sub-s. 5).

After every conviction under the 11th section there will follow a forfeiture of the fish caught, bought, sold, exposed for sale, or in possession for sale, at the discretion of the justices, and forfeiture of the instruments in taking the fish (sub-s. 6).

(a) Fishery districts are constituted under Act 1865, s. 4, and see Act 1873, part II. A brook which is merely a tributary to a tributary of a river was held not to be a part of the district. *Mer-*

ricks v. Cadwallader. 51 L. J. M. C. 20.

(b) Only the owner can give leave: *Swanwick v. Varney*, 108 N. of C. Nov. 19, 1881.

This Act is to be read as one with "The Salmon Fisheries Appeal Acts, 1861 to 1876;" the appeal clause (p. 256) will therefore be applicable to any conviction under "The Freshwater Fisheries Act, 1878."

Salmon Fishery Acts.

24 & 25 Vict. c. 109 (Act 1861); 28 & 29 Vict. c. 121 (Act 1865); 36 & 37 Vict. c. 71 (Act 1873).

The 24 & 25 Vict. c. 109, s. 39, repealed all the prior Acts respecting salmon fisheries from 13 Ed. 1, st. 1, c. 47, to the 11 & 12 Vict. c. 52. Repeal of former statutes.

As to the appointment of conservators or overseers for the preservation of the fish, see 24 & 25 Vict. c. 109, s. 33 (Act 1861); 28 & 29 Vict. c. 121 (The Salmon Fishery Act, 1865), ss. 4—17. Conservators.

After the expiration of three months from the date of the advertisement of the appointment of the conservators, no objection can be made to the validity of any orders or proceedings relating thereto: and the copy of a newspaper containing such an advertisement will be evidence of the appointment: 28 & 29 Vict. c. 121, s. 18. Appointment and evidence of the appointment.

The conservators have given to them special powers to proceed against persons violating the Act, sec. 27 (*ib.*) And to grant licences to fish: secs. 33, 34 (*ib.*) (*a*). Powers.

Act 1861, s. 4, defines the word "salmon" to include all migratory fish of the genus of salmon; the section enumerates the many terms including the "salmon genus." Salmon defined.

"Young of salmon" will include all young of the salmon species, whether known as fry, smolt, smelt, &c., or by any other name, local or otherwise.

As to the including trout and char within the provisions of the Acts in reference to salmon, see "The Freshwater Fisheries Act," 1878, 41 & 42 Vict. c. 39, ss. 5—10.

As to the granting of licences to fish, see Act 1865, ss. 33—38; and which licences may be forfeited on a second conviction of an offence against the Salmon Fishery Acts, Act 1865, s. 56; Act 1873, s. 18. Licences.

A licence to fish for salmon, also includes the taking trout and char. The Fresh-water Fisheries Act, 1878, s. 7; see Act, 1865, s. 64. As to sections 8 & 9, Act 1861, apply-

(a) Every subject has a common right to fish with lawful nets in a navigable river as well as in the sea: *Warren v. Matthews*, 6 Mod. R. 73; *Bagott v. Orr*, 2 B. & P. 472.

ing to trout. Unlawfully and wilfully taking fish in water running through land adjoining a dwelling-house is a misdemeanour (*R. v. Hodges*, M. & M. 34), and punishable under the Larceny Act, 24 & 25 Vict. c. 96, s. 24; but this chapter treats only of such offences as are matters of appeal. It may, however, be mentioned that "unlawfully" means without any *bond fide* claim of legal right: *Taylor v. Newman*, 32 L. J. M. C. 186; 4 B. & S. 89. And an act intentionally committed: *Hudson v. McRae*, 33 L. J. M. C. 65.

Offences
subject to
appeal.
Poisoning
rivers.

The causing or knowingly permitting to be put into any waters containing salmon, or any tributaries thereof, any liquid or solid matter to such an extent as to cause the waters to poison or kill fish.

1st conviction, a penalty not exceeding £5.

2nd conviction, not less than £10, and a further penalty of not exceeding £2 a day during which the offence is continued.

3rd or subsequent convictions, a penalty not exceeding £20 a day for every day during which such offence is continued, commencing from the date of the third conviction: Act 1861, s. 5.

But no person is to be subject to this penalty where he is exercising a legal right if he has used, within reasonable cost, the best practicable means to render such liquid or solid matter harmless. The section is not to prevent a person from acquiring such a legal right, or exempt him from a punishment for any nuisance (*a*).

Fishing
with lights
&c.

A person using a light [otter, lath or jack, wire or snare (Act 1873, s. 18)] for the purpose of catching salmon; or using a spear, gaff, strokshall, snatch, or other like instrument for catching [or killing (Act 1873, s. 18)] salmon; or having a light or any of the foregoing instruments under such circumstances as to satisfy the Court that he intended at the time to catch salmon by means thereof, will incur a penalty not exceeding £5, and forfeiture (*b*) of the instruments found upon him in contravention of this section; but the section will not apply to a person using a gaff as an auxiliary to *angling* with rod and line (*c*): Act 1861, s. 8, *ib*.

Using roe
as bait.

A person using fish roe for the purpose of fishing; or who

(*a*) The stat. sec. 6 gives power to have the question under sec. 5 tried before a jury.

(*b*) This forfeiture is whether fish are caught or not: *Ruther v. Harris*, 1 Ex. D. 97; 45 L. J. M. C. 103; 34 L. T. 825.

(*c*) This section also applies to the catching trout in a salmon river in a fishery district: 28 & 29 Vict. c. 121, s. 64; see also as to trout and char, 41 & 42 Vict. c. 39, s. 5.

shall buy, sell, or expose for sale or have in his possession any salmon roe, will incur for each offence a penalty not exceeding £2, and forfeiture of all salmon roe found in his possession. But the section will not apply to a person who has such roe in his possession for artificial propagation (*a*): Act 1861, s. 9, *ib*.

A person wilfully taking [kill, injure or attempt to take (Act 1873, sec. 18)], unclean or unseasonable salmon; buying, selling or exposing for sale, or having in his possession any such salmon, or any part thereof, will incur the following penalties:—1. The forfeiture of the fish; 2. A penalty not exceeding £5 in respect of *each* fish, taken, sold or exposed for sale, or in his possession (*b*). Taking unclean fish.

But the section will not apply to a person accidentally taking such fish and who forthwith returns it to the water with the least possible injury;—or to one who takes such fish for artificial propagation, or other scientific purpose. Act 1861, sec. 14.

No salmon shall be caught or be attempted to be caught between September 1st and February 1st following, excepting with rod and line between September 1st and November 1st following, under a penalty of a forfeiture of the salmon caught, and the incurring a penalty of not exceeding £5; and a further penalty of not exceeding £2 for each salmon so caught. Act 1861, sec. 17, *ib*. And also the forfeiture of any net or instrument being used. Act 1865, sec. 58 (*c*). Close time.

A person buying or selling or exposing for sale any salmon between the 3rd September and 2nd February following, will forfeit such fish and incur a penalty not exceeding £2 for each such fish. But this section will not apply to cured or pickled salmon, or any salmon caught beyond the limits of the Act. Nevertheless, the burden of proof that such salmon had been caught beyond such limit will lie on the accused. Act 1861, sec. 19, *ib*. See *Whitebread v. Smithers*, 2 C. P. D. 553. Act 1865, sec. 58.
Selling salmon during close time.

By Act 1865, sec. 56, any person convicted twice of an offence under any of the preceding sections 8, 9, 14, 17, 19 of the Salmon Fishery Act, 1861, shall on a *third* conviction under any of such sections, instead of being fined in a pecuniary penalty, be sentenced to imprisonment with hard labour for any period not exceeding six months, [or less than Penalties under sections 8, 9, 14, 17, 19, Act 1861.

(*a*) As to the prior necessary consent of the Conservators, see 28 & 29 Vict. c. 121, s. 60. See also the reference in the next

preceding note.

(*b*) See also Act 1863, s. 3.

(*c*) See as to Bye Laws Act, 1873, s. 39.

one month, Act 1873, s. 18,] and if a licensee, he shall, on being convicted a second time of an offence against the Salmon Fishery Acts, 1861, 1865, forfeit his licence.

The Salmon Act, 1873, s. 18, amends the 75th sec. by striking out "1861 & 1865," which are to be read as if—"1861 to 1873, and under any bye-law made under the authority of this Act"—were inserted in lieu thereof. But it will not be imperative for the justices to inflict a penalty greater than fifty shillings for a second offence, or more than £5 for a third offence under the Salmon Fishery Acts from 1861 to 1873; see further as to the general minimum penalties on a second offence,—*post*, p. 257, Act 1865, sec. 57.

Taking the
young of
salmon.

A person wilfully taking or destroying young salmon; buying, selling or exposing for sale, or having in his possession the young of salmon; placing any device for the purpose of obstructing the passage of the young salmon; wilfully injuring the young salmon; wilfully disturbing any spawning bed, or any bank or shallow on which the spawn of salmon may be, will incur the following penalties; 1. Forfeiture of the salmon found in his possession; 2. Also of rods, lines, &c., used in committing the offence (*a*); 3. for each offence he shall pay a penalty of not exceeding £5. But this section will not apply to a person taking young salmon for artificial propagation; or prejudice an owner in his right to take materials from the stream. Act 1861, sec. 15, *ib*.

User of
nets.

No person shall use a net for taking salmon having a mesh of a less dimension than two inches from knot to knot, or eight inches measured round each mesh when wet; penalty, a forfeiture of the nets, and a penalty not exceeding £5. See *Thomas v. Evans*, 27 L. J. M. C. 172.

The placing of two or more nets behind or near to each other so as practically to diminish the mesh, or the using of any other artifice so as to evade this section will be deemed a contravention of the Act. Act 1861, sec. 10.

User of
fixed
engines.

The owner of a fixed engine (see Act 1861, s. 11,) of any description, or net secured by anchors placed for the catching salmon (or for the purpose of facilitating the catching of salmon, or detaining or obstructing the free passage of salmon, Act 1873, s. 18,) in any inland or tidal (*b*) waters will be liable to a penalty of not exceeding £10 for each day such engine is so fixed; *Thomson v. Jones*, 34 L. J. M. C. 45; but this section will not affect any right of fishery

(*a*) See *Ruther v. Harris* (*supra*).

(*b*) See *Reece v. Miller*, 51 L. J. M. C. 64.

lawfully exercised at the time of the passing the Act or under any grant or charter or immemorial usage ; or apply to fishing weirs or fishing mill dams. Sec. 11, *ib.* See *Olding v. Wild*, 14 L. T. 402, Q. B. *Moulton v. Wilby*, 32 L. J. M. C. 164 (*a*). See further as to the meaning of "fixed engine," 28 & 29 Vict. c. 121, s. 39, amending the provisions whereby the offence may be committed.

"Stop nets" have been held to be within the mischief "Stop provided for by 2 Hen. 6, c. 15, and so within the 11th ^{nets.}" section above quoted. *Holford v. George*, 6 B. & S. 815 ; see also *Gore v. The Special Commissioners for English Fisheries*, L. R. 6 Q. B. 561 ; 40 L. J. Q. B. 252 ; 24 L. T. 702. But it seems that using a net, which is not *bonâ fide* of itself an instrument peculiarly adapted for the taking of salmon, and which is not fixed for such purpose is not within the Act. *Watts v. Lucas*, L. R. 6 Q. B. 226 ; 40 L. J. M. C. 73 ; 24 L. T. 128 ; see *Lyne v. Leonard*, L. R. 3 Q. B. 156 ; 18 L. T. 55 ; 16 W. R. 562 ; (*b*) *Thomas v. Jones*, 34 L. J. 45.

No dam, except such fishing weirs or fishing mill-dams as ^{Using} were lawfully in use at the time of the passing the Act ^{dams.} (1861) by virtue of a grant, royal charter, or by immemorial usage (*c*), shall be used for the catching or attempting to catch salmon, under a penalty not exceeding £5 for each offence, £1 for each fish caught, and forfeiture of all the fish caught, and the nets, &c. used. Act 1861, sec. 12, see *Moulton v. Wilby*, 2 H. & C. 25 ; 32 L. J. M. C. 164.

Each fishing weir (*d*) must have a free gap for the fish ; a ^{Gap to} mill dam a free pass ; and each with a sufficient flow of ^{weir.} water to enable salmon to pass (*ib.*). The passage must be perfectly free. *Hodgson v. Little*, 33 L. J. M. C. 229 (*post*).

The fishing in the head or tail race of any mill, or within ^{Fishing in} fifty yards below any dam without a fish pass with a flow of ^{head or} water through it, will incur a penalty of £2 for each offence, ^{tail race.} and a further penalty of £1 for each salmon caught, and the nets, &c. used, *ib.*

The failing to place gratings to prevent salmon passing into ^{Gratings to} artificial water channel ; penalty not exceeding £5 for every ^{artificial} streams.

(*a*) Also cases, n. (*b*), p. 254.

(*b*) A person using any instrument or device for the catching salmon requires a licence : *Lyne v. Leonard* (*sup.*), 37 L. J. M. C. 55.

The right to destroy any fixed nets is not confined to the Conservators or overseer : *Williams*

v. Blackwall, 32 L. J. Ex. 174.

(*c*) Applicable only to navigable rivers : see *Rolle v. Whyte*, L. R. 3 Q. B. 286 ; *Lord Leconfield v. Earl of Lonsdale*, L. R. 5 C. P. 657 ; 39 L. J. C. P. 305.

(*d*) See Act 1873, s. 4 ; *Rolls v. Whyte*, L. R. 3 Q. B. 286.

day after six months during a failure to comply with the section ; and a penalty of £1 a day during which there may be a failure to maintain such gratings. Act 1861, s. 13.

No fixed engines in close time.

Fixed engines are to be removed during close time, under a penalty not exceeding £10 a day whilst they remain unre-moved, and a forfeiture of the engines. Act 1861, sec. 20 ; a fishing mill-dam is within the meaning of this section. *Hodgson v. Little*, 14 C. B. N. S. 111 ; 32 L. J. M. C. 220.

Fishing in weekly close time.

The fishing with by other means than rod or line any salmon between 12 at noon on Saturday, and 6 A.M. on Monday, is forbidden, under a penalty of a forfeiture of the fish caught, any net, &c., and a fine of not exceeding £1 for each fish caught. Act 1861, s. 21, *ib.* See *Ruther v. Harris*, *ante*, p. 251, n. (b).

Free pas-sage to be kept in weekly close time.

During the weekly close time mentioned in sec. 21, a free passage is to be left through cribs or traps, under a penalty for each offence of not exceeding £5, and a further penalty of £1 for each fish caught, and a forfeiture of all fish caught. Act 1861, s. 22 ; Act 1873, s. 4. See *Pike v. Rossiter*, 37 L. T. 635.

Injuring fish passes. Fish passes to future dams.

Any one obstructing the erecting a lawful fish pass will incur a penalty of £10 for each offence ; or for wilfully injuring the same will be liable to a penalty not exceeding £5, and the cost of any repair. Act 1861, s. 23.

Supply of water to passes.

All future constructed dams are to be provided with fish passes of approved form ; penalty £5. Act 1861, s. 25. And sec. 26 provides for the flow of water, the drawing off of which renders the party liable to a penalty of five shillings for every hour during default.

Altering weirs with-out making passes.

Persons rebuilding or altering weirs or making new ones without proper passes, are liable to a penalty not exceeding £20 for every such offence ; and a further penalty of £2 for every day the offence may continue. The Salmon Act, 1873, s. 46.

Injuring passes.

The injuring a fish pass or rendering it less efficient, penalty £5 ; and a further penalty of £1 a day during continuance of the obstruction, &c., and the cost of the restoring the fish pass. Act 1873, s. 48.

Free gaps in weirs and dams.

As to the rules for enforcing free gaps in the fishing weirs under penalties, see Act 1861, s. 28 ; as to mill-dams, s. 29.

Spur walls in fishing dams.

No spur walls in fishing weirs, or mill-dam, or outrigger of more than twenty feet from the upper or lower side of any box or crib in such weir or dam : penalty on the owner not exceeding £1 a day for every day during the continuance thereof. Act 1861, s. 30, *ib.* On a second offence a forfeiture of licence, Act 1865, s. 56.

A person refusing a water bailiff access to a weir, dam, or fixed engine, or artificial watercourse; or any boat or other vessel used in fishing, or which there is cause to suspect contains salmon, or prohibited articles under The Salmon Fishery Acts, 1861 to 1873 (see Act 1861, s. 8, *et seq.*; Act 1865, ss. 58 and 64; Act 1873, ss. 17, 19); or obstructs the bailiff in such search; or refusing to allow any nets, &c., to be examined, or obstructing the water bailiff in such search, in each such case such person will be liable to a penalty not exceeding £5. Act 1873, s. 36 (a).

Obstruct-
ing any
water
bailiff.

A person fishing in a fishery district with rod and line without a licence after an appointed time by the conservators, is subject to a penalty of double the amount to be paid for a licence, and not exceeding £5. Act 1865, s. 35.

Fishing
without
licence.

And after such time any person in such district using any fishing weir, mill-dam, putt, putcher, net, or other instrument or device, not being a rod or line, for the catching salmon, without a licence for the same, will be liable to a penalty of double the amount of the licence, and not exceeding £20: sec. 36, *ib.* See *Lewis v. Arthur*, 24 L. T. 66; *Lyne v. Leonard or Fennell*, 37 L. J. M. C. 55; L. R. 3 Q. B. 156; 9 B. & S. 65; *Watts v. Lucas*, L. R. 6 Q. B. 226.

A licensee found fishing and not producing his licence on request by a conservator, water bailiff, or constable, or not making a reasonable excuse for its non-production, will be subject to a penalty of £1, and on a second conviction a forfeiture of his licence. Act 1865, ss. 37, 56.

Refusing
to show
licence.

A person obstructing an officer desirous of posting a notice in a fishing weir, mill-dam, or fixed engine; a penalty not exceeding £5; on a second conviction, if a licensee, a forfeiture of the licence. Act 1865, ss. 43, 56.

Obstruct-
ing officer
when post-
ing notices.

Defacing, destroying, or removing such notice, penalty 40s.; and on second offence, if a licensee, a forfeiture of the licence. *Ib. et ib.*

Destroying
notices.

Sec. 65, Act 1865, provides for the exportation of salmon under penalties. See also Act 1863, s. 3.

Exporta-
tion of
salmon.

No justice will be disqualified from hearing any case under the Salmon Fishery Acts, 1861, 1865, by reason of his being a conservator, or member of a board of conservators, or a subscriber to any society for the protection of salmon or trout, if the offence be not committed on his own land: see.

Justice's
jurisdic-
tion.

(a) Water bailiffs are deemed to be constables: sub-sec. 4, sec. 36, Act 1873; see also Act 1865, s. 27.

61, Act 1865. This section avoids the effect of *R. v. Allen*, 33 L. J. M. C. 98.

Appeal. Any person feeling aggrieved by any determination or adjudication of the justices with respect to any penalty or forfeiture under the Salmon Fishery Acts, 1861, 1865, he may appeal to the court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision from which the appeal is made; provided that the appellant within three days after the cause of appeal has arisen, give notice in writing to the other party to the proceedings of his intention to appeal, and of the grounds thereof: and also provided that the appellant shall, within three days after the cause of appeal has arisen, enter into his recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal and abide the judgment of the court thereon, and to pay such costs as might be awarded by the court. And the court has power to adjourn the appeal, and on the hearing to confirm, reverse, or modify the decision of the justices, with or without costs to be paid by either party. Sec. 66, Act 1865.

See the Summary Jurisdiction Act, 1879, s. 32, under which he has his election to appeal under sec. 66 (*supra*) or 31 of the Act 1879. *In re Clews*, 8 Q. B. D. 511; *R. v. Montgomeryshire*, 51 L. J. M. C. .

Minimum penalties. The penalty on a *second* conviction under the Salmon Fishery Acts, 1861 to 1873, shall not be less than one-half the greatest penalty capable of being imposed in respect of such offence; and on a conviction of a *third*, or any subsequent offence, the greatest amount of penalty mentioned in the said Acts shall be imposed. But nothing shall affect the discretion of the justices to impose hard labour as provided in the Salmon Fishery Act, 1865, s. 57.

Limitation of proceedings. All proceedings under these Acts are limited to be taken within six months of the committing an offence. 36 & 37 Vict. c. 71, s. 62 (Act 1873).

Dynamite prohibited. As to the prohibition of the use of dynamite in a public fishery, see "Fisheries Dynamite Act, 1877," 40 & 41 Vict. c. 65. See also "The Fresh Water Fishery Act, 1878," 41 & 42 Vict. c. 39, s. 12.

Bye-laws. For bye-laws as to trout, see 39 & 40 Vict. c. 19 (Act 1876).

Sea Fisheries Act, 1868.

31 & 32 Vict. c. 45.

This Act was passed to carry out a convention between the Governments of England and France concerning fisheries in the seas adjoining the British and French coasts, and to amend the laws relating to British sea fisheries. Object of the Act.

The convention is set out in the 1st schedule of the Act, sec. 6, and orders in Council may be made for maintaining good order among sea fishing boats and the persons belonging thereto, and to impose penalties not exceeding £10 for breach thereof, sec. 7.

Sea fishery officers are to be appointed under sec. 8.

The term "sea fish" includes all and every description both of fish and shell-fish found in the seas, except salmon, sec. 5.

Every person who shall commit an offence against the fishery regulations of the Act within the exclusive limits of the British Islands, and every person belonging to a British sea fishing boat who shall commit an offence against those regulations outside those limits, will be liable to a penalty of not less than eight shillings, and not more than £50; or, in the discretion of the court, to imprisonment of not less than two days, and not more than three months with or without hard labour, sec. 14.

If the offence be one by which some injury has been caused, by assaulting anyone belonging to another sea fishing boat, or by causing damage to another sea fishing boat, or property on board thereof or belonging thereto (sec. 13) the court may order the offender, in addition to any penalty, to pay a reasonable sum as compensation to the person injured, and which may be recovered in the same way as a penalty under the Act, sec. 14.

Any person belonging to a French sea fishing boat entering within the British fishing limits in contravention of the articles 32, 33, 35 in the 1st schedule to the Act, the person in charge of the boat will be liable for the first offence to a penalty not exceeding £10; and for a second offence to a penalty not exceeding £20; and in default of payment the court may order the defendant to be detained in some port in the British Islands for a period not exceeding three months from the date of the sentence inflicting the penalty, sec. 16. Entry into the exclusive fishing limits.

The neglect to exhibit lights on board a sea fishing boat in accordance with articles 13 & 14 in the 1st schedule will be "an offence" under the Act, sec. 20.

The owner and master of a sea fishing boat not entered and registered in accordance with the Act, will each be liable to a penalty not exceeding £20, and the boat may be seized and detained by the sea fishery officer, sec. 22.

Register of
vessel evi-
dence of
ownership.

The register of the sea fishing boat will be evidence of ownership thereof, sec. 24. And the master of every sea fishing boat is bound to have on board his boat the certificate of the register or official paper evidencing his nationality; the master acting in contravention of this section, unless there is some reasonable cause for his not having such certificate or official paper (the onus of proof being on him) will be liable, together with his boat and crew, to be taken by any sea fishery officer without warrant, summons, or process into the nearest port, and there in a summary manner be ordered to pay a penalty not exceeding £20; and if such penalty is not paid, and the boat is not British, the boat may be detained in port for a period not exceeding three months from the date of the sentence, sec. 26.

Sea Fisheries.—Oysters and Mussels.

Oyster and
Mussel
Fisheries
Act, 1866.

Jurisdic-
tion.

(a) Under "The Oyster and Mussel Fisheries Act, 1866," 29 & 30 Vict. c. 85, the portion of the sea shore to which an order of the Board of Trade under that Act might relate (as far as it is not by law within the county) will, for all purposes of jurisdiction, be deemed to be within the body of the adjoining county, or within each adjoining county where there are more than one; sec. 20. As to the making the order see sec. 3, *et seq.*

As to the ownership of the oysters and mussels within the limits of the fishery, see secs. 15, 16, 17.

It will not be lawful for any person except the owner—

1. To use any implement of fishing, excepting a line, hook, or net adapted to take floating fish, and so used as not to disturb or injure in any manner any oyster or mussel bed or fishery.

2. To dredge for any ballast, &c. (except under authority to improve the navigation).

(a) As to the oyster fishery in the River Medway, see 2 G. 2, c. 19. This Act was by inadvertence repealed by the Sea Fisheries

Act, 1868; but was re-enacted by 31 & 32 Vict. c. 53, the Medway Regulation Continuance Act, 1868.

3 To deposit any ballast, &c.

4. To place any instrument, &c., prejudicial or likely to be prejudicial to such bed or fishery (except for a lawful purpose of navigation or anchorage).

5. To disturb or injure in any manner (except as aforesaid) any oyster or mussel bed, or fishery, or oysters or mussels; any person acting in contravention of this section will be liable to the following penalties:—

For a first offence, not exceeding £2.

For a second offence, not exceeding £5.

For a third and every subsequent offence, not exceeding £10.

And be liable to make full compensation to the grantees for all damage sustained by reason of the unlawful act, which compensation may be recovered in a Court of competent jurisdiction (but not in a summary manner) whether a prosecution has taken place under this section or not: 31 & 32 Vict. c. 45, s. 53; The Sea Fisheries Act, 1868.

Any person dredging for oysters or mussels in contravention of the restrictions imposed by the Board of Trade under sec. 41 of the Sea Fisheries Act, 1868, will be subject to a penalty not exceeding £20, with the forfeiture of all oysters and mussels caught: sec. 41, Act 1868.

Persons obtaining an Order of the Board of Trade are bound to keep the same for sale, at some convenient place near to the place to which the Order relates, “at a price not exceeding sixpence for a copy of this part (the third) of this Act, and of the Order, and of the Act confirming it together.” Any person failing to comply with this provision will for every such offence be liable to a penalty not exceeding £5; and a further penalty not exceeding £1 for every day during which such failure may continue after the first penalty has been incurred: sec. 49, Act 1868.

The penalties in England may be recovered before any justice; sec. 57, Act 1868.

If any person feels aggrieved by any conviction under this Act, or by any determination or adjudication of the Court with respect to any compensation under this Act, where the sum adjudged to be paid exceeds £5, or the period of imprisonment adjudged exceeds one month, he may appeal therefrom in manner following, that is to say:—

In England, in manner directed by law, subject in the City of London and the Metropolitan District to the enact-

ments in that behalf made and subject elsewhere to the conditions and regulations following.

1. The appeal shall be made to some court of general quarter sessions for the county or place in which the Court whose decision is complained of has jurisdiction holden not less than fifteen days and not more than four months after the decision of the Court, from which the appeal is made.

2. The appellant shall within three days after the said decision give notice in writing to the other party of his intention to appeal and the ground of such appeal.

3. Immediately after such notice the appellant shall, before a justice of the peace, enter into recognizances with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court.

4. The court may adjourn the appeal, and upon the hearing thereof may reverse, confirm, or modify the decision of the justice or justices with or without costs to be paid by either party.

See also the Summary Jurisdiction Act, 1879, sec. 32 (*infra*), under which the appellant will have the option to appeal under that Act or the clauses above set out: *In re Clews*, 8 Q. B. D. 511; see also *R. v. Montgomeryshire*, 51 L. J. M. C.

FRIENDLY SOCIETIES.

Societies
within the
act.

The Friendly Societies Act, 1875, 38 & 39 Vict. c. 60, consolidated the law relating to Friendly Societies, and the following societies are by sec. 8 included in the Act, and require registration thereunder.

(1) Friendly Societies established for the relief and maintenance of its members and relations during sickness, &c.

(a) For insuring money on the birth of a member's child or death of a member, or for funeral expenses, &c.; or in case of persons of the Jewish persuasion for the payment of a sum of money during the period of confined mourning.

(b) For the relief of the member's family when he is on travel in search for employment, or when in distressed circumstances, or in case of shipwreck or loss or damage to boats or nets.

(c) For the endowment of members or nominees.

- (d) For insurance against fire not exceeding £15 of tools or implements of trade of a member.

(Provided, no society to exceed assuring an annuity beyond £15, or a gross sum of £500 will be registered.)

(2) Cattle Insurance Societies.

(3) Benevolent Societies.

(4) Working Men's Clubs.

(5) Specially authorised societies by the Treasury.

See as to Trade Unions, 39 & 40 Vict. c. 22, ss. 2, 3, 16 ; and see sec. 28 of 38 & 39 Vict. See also 'The Industrial Schools and Provident Societies' Act, 1876, 39 & 40 Vict. c. 45 (*infra*).

By 14th sec. sub-sec. 3, it will be an offence if any registered society,—

(a) Fails to give notice, send any return or document, or do or allow to be done any act or thing which the society is by this Act required to give, send, do, or allow to be done ;

(b) Wilfully neglects, or refuses to do, any act, or to furnish any information required for the purposes of the Act by the chief or any other registrar, or other person authorised under this Act, or does any act or thing forbidden by this Act ;

(c) Makes a return or wilfully furnishes information in any respect false or insufficient.

For the above offences the penalty will be not less than £1, nor exceeding £5.

Sub-sec. 4 :—Every offence by the society will be deemed to have been committed by every officer thereof bound by the rules to fulfil any duty whereof such offence is a breach ; if no such officer, then every member of the committee of management ; unless such member be proved to be ignorant of or to have attempted to prevent the commission of such offence ; and every default under this Act constituting an offence, if continued, constitutes a new offence in every week during which the same continues.

If any person wilfully makes, orders or allows to be made, any entry, erasure in, or omission from, any balance-sheet of a registered society, or any contribution or collecting book, or any return or document required to be sent, produced, or delivered for the purposes of the Act, with intent to falsify the same or to evade any of the provisions of the Act, he will be liable to a penalty of not exceeding £50, recoverable at

the suit of the chief or any assistant registrar, or of any person aggrieved: sec. 32, sub-sec. 1. And be recoverable, under sub-sec. 3, in a court of summary jurisdiction.

If any person obtains possession by false representation or imposition of any property of the society, or having the same in his possession withholds or misapplies the same, or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society, and authorised by the Act; on complaint of the society, or members authorised by the society, or the trustees or committee of management of the same, or by the central office, or of the chief registrar, or any assistant registrar by his authority; and on conviction—penalty not exceeding £20 and costs—to deliver up the property, or repay all monies improperly applied; in default, to be imprisoned with or without hard labour not exceeding three months (*a*); sec. 16, sub-sec. 9.

With respect to the payments on the death of children under ten years of age, it will be an offence if a society pay money on the death of a child under ten years otherwise than provided by the Act. Sec. 28, sub-sec. 6.

Or if a parent or personal representative of a parent claiming money on the death of a child produces any certificate of such death other than is provided by the Act to the society from which the money is claimed, or produces a false certificate, or one fraudulently obtained, or in any way attempts to defeat the provisions of the Act with respect to payments upon the death of children; *ib*.

By sub-s. 7 the word “society” (in sec. 28) will include all industrial assurance companies assuring the payment of money on the death of children under the age of ten years.

As regards Friendly Societies whether registered or not, (*b*) and industrial assurance companies, as receive contributions by means of collectors at a greater distance than ten miles from the registered office or principal place of business of the society or company (42 Vict. c. 9, s. 1, Amending Act, 1879), it is an offence under the Act; 38 & 39 Vict. c. 60, s. 30, sub-s. 12.

(*a*) If a collector of the society becomes a member of the committee or holds any office in the same (except as superintendent collector, within the area to be from time to time specified; *ib*. sub-s. 4); or if any member of the committee of management becomes a collector, or if any collector votes

(*a*) Or the party may be proceeded against by indictment.

(*b*) As to Trade Unions, see 39 & 40, Vict. c. 22.

at or takes any part in the proceedings of a general meeting.

(b) Or if any person attempts to transfer a member or person insured from one society to another without such written consent as mentioned in sub-s. 3 to this 30th section.

(c) Or if a society fails to give notice of such transfer as required by the same sub-s. 3.

In each case where a society, officer or member of a society, or other person is guilty of an offence under the Act for which no penalty is expressly provided, he will be liable on conviction to a penalty of not less than £1 and not more than £5, and which may be recovered in a Court of Summary Jurisdiction: sec. 32, sub-ss. 2, 3. This will apply to offences under secs. 28, 30.

By sec. 32, sub-s. 1: If any person wilfully makes, orders, or allows to be made any entry, erasure in, or omission from any balance sheet of a registered society, or of any return or document required to be sent, produced or delivered for the purposes of the Act, with intent to falsify the same or evade any of the provisions of the Act; he will be liable to a penalty not exceeding £50, also recoverable in a Court of Summary Jurisdiction (sub-s. 3); see also s. 33.

In describing the offence no exception or qualification need be specified or negatived: sec. 33, sub-s. 5.

Every document, copy or extract of a document with the seal or stamp of the central office; and every document purporting to be signed by the chief or assistant registrar, inspector, or public auditor or valuer under the Act will, in the absence of any evidence to the contrary be received in evidence without proof of the signature: sec. 39.

By sec. 33, sub-sec. 5, any party may appeal from any order or conviction made by a court of summary jurisdiction on determining any complaint or information under the Act, as follows:—

(a.) The appeal is to be made to some court of quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days, and not more than four months after the decision appealed from.

(b.) The appellant will within seven days after the cause of appeal has arisen, give notice to the other party, and to the Court of Summary Jurisdiction of his intention to appeal, of the grounds thereof. See *Curtis v. Buss*; S. C., *Ex parte Curtis*, 3 Q. B. D. 13; 47 L. J. M. C. 35; 37 L. T. 533 (*supra*, pp. 73, 132).

(c.) He will enter into his recognizance immediately after such notice in £10, with two sufficient sureties in £10, conditioned to try the appeal, and abide the judgment, and pay costs.

(d.) He may then be discharged if in custody.

(e.) The court may adjourn the appeal, and confirm, reverse, or modify the decision, or remit the matter back, with the opinion of the Court of Appeal thereon, or make such order as the court thinks just.

(f.) If remitted, the Court of Summary Jurisdiction will rehear the case, and decide in accordance with the opinion of the Court of Appeal. See also and compare the Summary Jurisdiction Act, 1879 (*infra*), secs. 31, 32.

This section omits the usual power to the court to order cost to either party; but the court has a general power of costs, under 12 & 13 Vict. c. 45, s. 5 (with this exception, the above section is similar to the appeal section in the Trade Union Act, 1871, s. 20).

See the Summary Jurisdiction Act, 1879, sec. 32, *post*, giving the party his election to appeal under that Act.

GAMING.

(See *Betting Houses*.)

First law
against
gaming,
12 Hen. 2.

The earliest statute against gaming was the 12 Hen. 2, c. 6, by which servants, artificers, and victuallers were prohibited from wearing sword or dagger, but should "have bows and arrows, and use the same on Sundays and holidays; and leave off all plays of tennis or football, and other games, called coits, dice, casting of the stone, and other such importune games."

The encouragement of archery was evidently considered of the highest importance; and statutes were passed, from time to time, for the promotion of the general efficiency of the people in archery; and the playing of games was looked upon as eminently detrimental to the use of the bow and arrow, and the well-being of the realm.

Under these requirements of the times a statute was passed in the reign of Hen. 8 (1541-2), 33 Hen. 8, c. 91, for the suppression of gaming, a portion of which is still in force.

33 Hen. 8. The "Acte" is entitled, "An Acte for Mayntenance of

Artyllerie and debarringe of unlawful Games." The preamble of the "Acte" is in the quaint language of ancient statutes, giving an interesting historical picture of the times and the pernicious effect of gaming, which was then applicable in particular "to the great hurte and lett of shotinge and archerie;" and notwithstanding "div'se good and lawfull statute have been devised, enacted and made, many subtyll and inventatyve and craftye psons, intendinge to defraude the same statute, sithence the makinge thereof have founde and dayly fynde many and sondrie newe and crafty games and playes—by reason whereof archerie y's sore decayed and dayly y's like to be more mynished." The "Acte complayninge shewes" that, "by meanes and occaſion of customable usage of tennys playe bowles cloyſhe and other unlawfull games, phibited by mayne good and beneficiall estatute by authoritie of Parliament in that behalfe pvided and made, great ympoverishment hath ensued, and manye haynous murders robberies and felonyes were cōmytted and done, and also the devyne service of God by such mis doers on holye and festyvall dayes nor heard or solempnized, to the highe displeasure of Almyghtie God; as by the foresayde preamble [3 Hen. 8, c. 3], more playnely maye appeare."

The statute of Hen. 8 (*a*) inflicts a penalty of forty shillings a day on any person by himself, factor, deputy, or

(*a*) The section in the statute here referred to is numbered 11 in the quarto ed. of the Statutes, the ed. commonly in use by the profession, with text writers, and in the courts at Westminster; but it is sec. 8 in the new Revised Statutes as founded on the folio ed. of the Statutes prepared and published under the Royal Commissions of 1800 and 1806. This is not the only instance of the different numbering of the sections in the two contemporaneous editions of the Statutes, the folio and quarto; and it seems inexplicable that the difference here noticed should have happened, and that there should have been no proper concert between the editors. The quarto edition has been the one in universal use; it has been the collection of

the Statutes, on which (until recently) all legislation has been based; the folio edition, although a fine work, has not been brought into use. Now, the present revisors of the Statutes seem wholly to ignore the existence of the quarto edition, and thereby no little confusion is created in ascertaining correctly the sections to which reference may be made. One prominent illustration may be given in regard to the Statute of Frauds, 29 Car. 2, c. 3. The folio and the Revised editions of the Statutes have secs. 13, 14, & 15 of the Statute of Charles of the quarto edition, as secs. 14 & 15,—the three secs. in the one are as two in the other,—thereby making the well-known *sec.* 17, having reference to contracts, in the quarto edition, as sec. 16 in

servant who for gain, lucre or living shall keep, hold, occupy, exercise or maintain, any common house, alley or place of dicing, table or carding, or any other manner of game prohibited by statute, or any unlawful new game now invented, or hereafter to be invented, and suffering any such game to be had, kept, executed, played or maintained within any such house, garden, alley or other place, contrary to the form of the statute; and every person using or haunting such houses and plays and there playing, will forfeit for every time so doing six shillings and eight pence.

A cock-pit
within 33
Hen. 8.

Keeping a cockpit was held to be within this section: Dalton, c. 46. The keeping a billiard-table has also been said to be within it: *R. v. Bradford*, Loft. 29. See now 9 & 10 Vict. c. 109, s. 10, under which the justices grant licences to use billiard-tables.

Gaming in-
dicts de.

The keeping a gaming-house is indictable at common law: *R. v. Rogier*, 1 B. & C. 272; 2 D. & R. 431; *R. v. Taylor*, 3 B. & C. 502; see also 1 Hawk. c. 25, s. 6; *R. v. Dickson*, 10 Mod. 336; *R. v. Mason*, Lead. C. C. 487.

Lotteries.

Several statutes have been passed for the suppression of lotteries, from 10 & 11 Will. 3, c. 17 (A. D. 1698). In 1722, the Act 9 Geo. 1 c. 19, was passed whereby persons intruding lotteries of foreign states, or under colour of their being as foreign lotteries, are subject to a forfeiture of £200, one-third part to Her Majesty, one-third to the informer, and one-third to the poor of the parish. And sec. 5 gives an appeal to the party aggrieved by the judgment or determination of the justices to the next Quarter Sessions to be held for the county, city or place where the judgment or determination was made.

Appeal.

6 Geo. 2, c. 35 inflicts a penalty of £200 on persons selling or procuring chances in foreign lotteries; and sec. 30 gives a right of appeal to Quarter Sessions in the same words as in the statute of 1722 (*supra*).

Prohibition
of lotteries.

12 Geo. 2, c. 28, made further enactments against lotteries

the folio edition; and sec. 18, referring to recognizances, as sec. 17. Blackstone, Cruise, Blackburn, Benjamin, Chitty, Addison, Cave, and all who have written on contract of sale, or discussed the Statute of Frauds, have familiarised the 17th sec. as being *the* section specially applicable to the formation of the contract of sale. The Statute Law

Revision Act, 1881, repeals sec. 17 of the Statute of Frauds; but this is not the familiar sec. 17 in the quarto edition; it is sec. 17 of the folio edition having reference to the recognizances, and which is sec. 18 of the quarto edition. See Lely's Chitty's Statutes, vol. 3, pp. 1227—8; and the Annual Continuation for 1881, p. 4.

and gaming, inflicting a penalty of £200 on any person or persons who shall keep any office under the denomination of a sale of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things by way of lottery, or by bets, tickets, numbers or figures, cards or dice, or should make, print, advertise, or publish, or cause to be made, printed, advertised or published any proposals or schemes for advancing small sums of money by several persons, amounting in the whole to large sums to be divided among them by chances of the prizes of some public lottery.

See, as to the application of this clause, *O'Connor v. Bradshaw*, 5 Ex. 882; 20 L. J. Ex. 26; and see also *Fisher v. Bridges*, E. & B. 642; *Sykes v. Beaden*, 11 Ch. D. 170, *per* Jessel, M. R.

The owner and keeper of a common gaming-house, and those having the care and management thereof, and also the banker, croupier and other person acting in or conducting the business of a common gaming-house, on conviction thereof before two justices, besides any penalty to which he may be liable under 33 Hen. 8, c. 9, shall be liable to forfeit not more than £100, or be committed to the house of correction, with or without hard labour for not more than six months. On non-payment of the penalty the justice may issue his distress warrant. A person convicted summarily for any such offence will not be liable to indictment. 8 & 9 Vict. c. 109, s. 4. Keeping a common gaming-house.

The proof of the house being a common gaming-house will be, in default of other evidence, that the house or place is kept or used for playing therein at any unlawful game, and that a bank is kept there by one or more of the players exclusively of the others, or that the chances of any game therein are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake, play or bet: and every such house or place will be deemed a common gaming-house such as is contrary to law and forbidden to be kept by the Act of Hen. 8, and by all other Acts containing any provision against unlawful games or gaming-houses: sec. 2; see also sec. 8. Proof of a common gaming-house.

Proof of gaming for money is not necessary to support an information for gaming: sec. 5.

By 42 Geo. 3, c. 111, s. 2, it is declared that the person keeping any house for gaming or lotteries not authorised by Parliament shall forfeit £500, and the person offending be Keeping house for gaming or

lotteries
not autho-
rised by
parliament.

treated as a rogue and vagabond, and be punished accordingly. And by sec. 3, where the parties are not proceeded against for the penalties, they may be as rogues and vagabonds, and other idle and disorderly persons.

As to the meaning of the word "*place*," see 4 Geo. 4, c. 60, s. 60; see also the cases quoted under tit. "Betting-Houses" (*infra*).

As to the advertising foreign lotteries, see further 6 & 7 Will. 4, c. 66; 8 & 9 Vict. c. 74.

Amend-
ment of
the law as
to games
under 8 &
9 Vict.
c. 109.

The 8 & 9 Vict. c. 109, was passed to amend the law concerning games and wagers, and repealed so much of 33 Hen. 8, c. 9, whereby any game of skill was declared an unlawful game, and no restriction is now put upon horse-racing.

Cheating
at play.

Cheating at play may be punished as if the money had been obtained by false pretences: sec. 17.

Wagering
contracts
void.

Section 18 declares all contracts relating to gaming or wagering null and void.

Appeal.

Any person summarily convicted under this Act (8 & 9 Vict. c. 109, s. 20) may appeal to the next general or quarter sessions to be holden for the county or place wherein the cause of complaint shall have arisen, provided such person at the time of the conviction, or within forty-eight hours thereafter, shall enter into his recognizance, with two sufficient securities conditioned personally to appear at the sessions and try the appeal, to abide the judgment of the Court, and pay the costs awarded. See Sum. Juris. Act, 1879, s. 32.

No conviction will be quashed for any informality. 8 & 9 Vict. c. 109, s. 20.

GAS AND GAS MEASURES.

The 22 & 23 Vict. c. 66 was passed that the sale of gas should be regulated by one uniform standard, and that all meters should be stamped. By 24 & 25 Vict. c. 79 the powers of the justices under 22 & 23 Vict. c. 66 (23 & 24 Vict. c. 146) are transferred to the Metropolitan Board of Works as regards the metropolis; and the powers of the Treasury are transferred to the Board of Trade by 29 & 30 Vict. c. 82.

The following are offences (*a*) under the Act 22 & 23 Vict. Offences c. 66 :—

Stamping a meter without duty ; inspecting the same and By In-
finding it correct ; refusing for three days after being required ^{spectors.}
(sec. 9), or neglecting, without lawful excuse, to test any
meter or to stamp any meter found to be correct on being
tested ; or who shall be guilty of any breach of duty imposed
upon him by the Act (*b*), or otherwise misconducting himself
in the execution of his office. Penalty not exceeding £5 for
every such offence : see sec. 11 (*c*).

By other persons :—

Forging or counterfeiting, or causing or procuring to be
made, forged, or counterfeited, or knowingly acting or assist-
ing in the making, forging, or counterfeiting any stamp or
marks used for the stamping or marking of any meter under
the Act. Penalty not exceeding £50 nor less than £10 :
sec. 14.

And persons knowingly selling, uttering, or disposing of,
letting, lending, or exposing to sale any meter with a forged
stamp or mark thereon. Penalty not exceeding £10 or less
than 40s., and the meter to be forfeited and destroyed : sec. 14.

Tampering (*d*) with a meter by repairing or altering it, or
knowingly causing it to be altered or repaired, or knowingly
tampering with or doing any other act in relation to any
stamped meter so as to cause it to register unjustly and
fraudulently. Penalty not exceeding £5, costs of a new
meter, and cost of removing and testing the meter : sec. 15.

Preventing or refusing to permit lawful access to any
meter (*e*). The like penalty : sec. 15.

Obstructing or hindering an examination or testing a meter.
The like penalty : sec. 15 (*f*).

Knowingly using an unstamped meter. Penalty not
exceeding £5, and the forfeiture and destruction of the
meter : sec. 17.

Fixing for use an unstamped meter, and not having a
measuring index. Penalty £5 for every such unstamped
meter : sec. 18.

(*a*) In all these cases the in-
formation must be laid within
six months, 11 & 12 Vict. c. 43,
s. 11.

(*b*) See sections 9, 10, 12, 13,
20.

(*c*) Recovery by distress : see
11 & 12 Vict. c. 43, s. 19. Im-

prisonment in default of pay-
ment : see 42 & 43 Vict. c. 49, s.
5. Sum. Juris. Act, 1879.

(*d*) See also 34 & 35 Vict. c. 41,
s. 38.

(*e*) See sec. 20.

(*f*) See also 34 & 35 Vict. c. 41,
s. 21.

Section 22 gives the right of appeal to any persons thinking themselves aggrieved by any order, judgment, or determination of any justice of the peace, mayor, or chief magistrate relating to any matter or thing in this Act mentioned or contained, who may appeal to the justices of the peace, recorder, or other presiding officer at the then next practicable general or quarter sessions (a) to be held for the city, borough, or county within which the alleged cause of appeal shall arise, first giving seven days' notice of such intention to appeal, and the grounds and nature thereof, to the party against whom such complaint is intended to be made; and forthwith after such notice entering into a recognizance before some justice of the peace, mayor, or other chief magistrate, with two sufficient sureties, conditioned to try such appeal and abide the order and award of the said court thereon; power is thus given to the court to hear and determine the matter or to adjourn the same, and to reverse or alter such decision and mitigate any penalty or forfeiture, and to order any money to be returned which may have been levied in pursuance of such order or determination, and also may order such further satisfaction to be made to the party injured as the court shall judge reasonable; power is also given to award costs. See also the Summary Jurisdiction Act, 1879.

Offences
under the
Gas Clauses
Act.

Under 10 & 11 Vict. c. 15 (b) (The Gas Clauses Act, 1847) are the following offences:—

Fraudulently laying a pipe or causing a pipe to be laid communicating with any pipe belonging to the undertakers without their assent (c); or who shall fraudulently injure any meter; or where no meter is used, using a burner of larger dimensions than that contracted for; or keeping the lights burning a longer time than contracted for; or who shall improperly use or burn such gas (d); or who shall supply other persons with such gas. Penalty £5, and also

(a) "Quarter sessions" mean—quarter sessions as defined by the special Act; and if such expression be not there defined it shall mean the general or quarter sessions of the peace which shall be held *at the place nearest the gas-works, or the principal office thereof*, for the county or place in which the gas-works are situate, or for *some division* of such county having a separate

commission of the peace: sec. 3 of 10 & 11 Vict. c. 15.

(b) As to a fraudulent concealment, see *The Imperial Gaslight Co. v. The London Gaslight Co.*, 10 Ex. 39.

(c) Gas taken by this means would be a larceny: *R. v. White*, 22 L. J. M. C. 123; *R. v. Firth*, L. R. 1 C. C. 172.

(d) See *Fowler v. Newbigging*, 23 J. P. 52.

40s. for every day such pipe remains, or works or burner used, or excess committed or continued, or supply furnished. The undertakers may remove the gas pipes notwithstanding any previous contract : sec. 18.

Wilfully removing, destroying, or damaging any pipe, pillar, post, plug, lamp, or other work of the undertakers for supplying gas, or wilfully extinguishing any public light, or wasting or improperly using any of the gas supplied. Penalty not exceeding £5, in addition to the amount of the damage done : sec. 19.

Carelessly, or accidentally breaking, throwing down, or damaging any pipe, pillar, or lamp belonging to the undertakers, or under their control (*a*). Penalty such sum as the justices may adjudge by way of satisfaction not exceeding £5: sec. 20.

Hindering an officer of the undertakers from inspection of the meters, &c. Penalty not exceeding £5 (*b*) : sec. 15.

Connecting or disconnecting a meter without notice. Penalty not exceeding £5 : 34 & 35 Vict. c. 41, s. 15.

The following are offences by the officers of the company or undertakers :—

Not effectually preventing the escape of gas from the pipes after twenty-four hours' notice, and wholly removing the cause. Penalty £5 per day, after the expiration of the twenty-four hours' notice (*c*) : sec. 24.

Allowing water to be fouled by the gas. Penalty not exceeding £20 ; and not exceeding £10 per day during the continuance of the offence : sec. 25.

Omitting to prepare and send an annual abstract of account (*d*) of the total receipts and expenditure of all the rents and funds of the undertakers, as directed by sec. 38 of the Act (10 & 11 Vict. c. 15), to the clerk of the peace for the county (*e*) in which the gas-works are situate. Penalty £20 : sec. 38.

Failing to keep a copy of the Company's special Act in their office, or to deposit the same with the clerk of the peace of the county. Penalty £20 ; and also £5 per day

(*a*) See *The Mayor of Hereford v. Morton*, 15 L. T. R. 187.

(*b*) See also 34 & 35 Vict. c. 41, ss. 21, 34.

(*c*) As to compensation to the injured party, see *Burrows v. Manchester Gas and Coke Co.*, 39 L. J. Ex. 33.

(*d*) See also 34 & 35 Vict. c.

41, s. 35, as to sending the accounts to the Local Authority.

(*e*) "County" is defined by the Act to include "riding or other division of a county having a separate commission of the peace ; and also county of a city or county of a town : " sec. 3, 10 & 11 Vict. c. 15.

Offences by
officers
of the
company.

afterwards, during which such copy shall not be so kept or deposited: sees. 45, 46.

The undertakers neglecting or refusing to supply gas for the public lamps. Penalty not exceeding 40s. for each default: 34 & 35 Vict. c. 41, s. 36.

Or if supplied under a less pressure, or of a less illuminating power, or of a less purity than the gas ought to be. Penalty not exceeding £20: *ib.* sec. 36.

All informations under the Acts must be laid within six calendar months: 8 & 9 Vict. c. 20, s. 151.

Recovery
of penal-
ties, and
appeal.

By sec. 1 of 10 & 11 Vict. c. 15, that Act is made to extend only to such gas-works as are established under a special Act, which shall declare it to be incorporated therewith; and by sec. 40 the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, is incorporated with the special Act.

Appeal.

Sec. 157 of the Railways Clauses Consolidation Act (8 & 9 Vict. c. 20) gives to any party aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of any Act incorporated therewith: his appeal to the quarter sessions for the procedure under which, see *infra*, tit., "The Companies Clauses Act." See also the Sum. Juris. Act, 1879, s. 32, giving an election of appeal.

Workmen
malicious-
ly breaking
contract on
gas and
water-
works.

As to a workman breaking his contract with a municipal authority or others, whose parliamentary duty it is to supply gas or water to a city, &c., whereby the inhabitants may be deprived of their supply of gas or water, see *infra*, tit., "Conspiracy and Protection of Property Act, 1875."

HABITUAL DRUNKARDS ACT, 1879.

42 & 43 Vict. c. 19.

Under this Act are established "retreats," or licensed houses, for the reception, control, and curative treatment of habitual drunkards. By sec. 23, any licensee knowingly and wilfully failing to comply with the provisions of the Act, or neglecting any drunkard placed in the retreat, will be guilty of an offence, and liable to a penalty not exceeding

£20, or imprisonment, not exceeding three months, with or without hard labour.

The like punishment, under sec. 24, may be inflicted on any person committing the following offences:—

(1.) Ill treating, or, being an officer, servant, or other person employed in or about a retreat, wilfully neglecting any habitual drunkard detained in a retreat.

(2.) Inducing, or knowingly assisting a habitual drunkard detained in a retreat to escape therefrom.

(3.) Without authority from the licensee, or medical officer of the retreat (proof whereof will lie on the offender), bringing into the retreat, or without the authority of the medical officer, excepting in cases of urgent necessity, giving or supplying to any person detained therein, any intoxicating liquor or sedative, narcotic or stimulant, drug or preparation.

Any person who contravenes, or fails to comply with the rules for the management of a retreat, will be subject to a penalty not exceeding £20, or imprisonment not exceeding three months, with or without hard labour: sec. 17.

By sec. 25, the drunkard while detained in the retreat is bound to conform to the rules thereof; or if he wilfully act contrary to them, he will be subject to a penalty not exceeding £5, or imprisonment not exceeding seven days (*a*).

Proceedings must be taken within six calendar months: 11 & 12 Vict. c. 43, s. 11.

An appeal may be made under sec. 30, to the next quarter Appeal sessions for the county, borough, or place, in which the cause of appeal has arisen; and the requirements to be followed under the clause are similar to those under sec. 31 of the Summary Jurisdiction Act, 1879, which see. Under both sections the punishment may be mitigated.

HARBOURS, DOCKS, AND PIERS.

The 10 & 11 Vict. c. 27, the Harbours, Docks, and Piers Clauses Act, 1847, is the general consolidation Act in reference to those undertakings; and that Act, together with the prior Act, 54 Geo. 3, c. 159, contain several matters, which

(*a*) At the expiration of his imprisonment he will be brought back to the retreat.

are therein provided for, and are subject to appeal to the quarter sessions.

Throwing
ballast,
&c., in the
sea, &c. The statute 54 Geo. 3, c. 159, s. 11, prohibits persons letting ballast, rubbish, &c., to be cast into any ports, roadsteads, harbours, &c., under a penalty not exceeding £10, over and above all expenses which may be incurred by the removal into a proper place of the matters which may have been so deposited.

Sec. 12 directs the way in which a ship may be unloaded.

Sec. 13 (*a*). The ballast or other matter is to be cast on the shore from the ship's-side nearest the shore, under a penalty not exceeding £10, over and above the cost of removing to a proper place such matter as may be so cast ashore. The like penalty for taking ballast: sec. 14.

Sec. 15 provides for the use of tarpaulins, in order to prevent any part of the ballast being unloaded from falling into the sea, harbour, &c.; any person offending therein is subject to a penalty of £5.

Sec. 21 provides for the recovery of the penalties.

Appeal. Sec. 26 gives an appeal to any persons convicted of any of the above offences to the quarter sessions, to be holden for the county, city, or place where the matter of appeal shall arise, and which shall be holden within three calendar months next after such convictions upon the appellant first giving ten days' notice of such appeal; the fourteen days' notice, under Baines' Act, will not apply as assumed in *R. v. Salop JJ.*, 50 L. J. M. C. 72; but see the requirements, under the Sum. Juris. Act, 1879, s. 31, which are applicable to this class of appeal on an election to appeal under that Act. See tit. "Sum. Juris. Act," sec. 32.

Offences
under 10 & 11 Vict. c. 27. Under the Act 10 & 11 Vict. c. 27, there are various offences provided for, and which are as follows:—

Under-
takers to
provide
watch-
house
for officers. The undertakers failing to provide a watch-house and boat-house for the use of the Custom-house officers, and keeping the same in suitable repair, with all necessary weighing materials (sec. 14), are under a penalty of £100 for every month during the time the same shall continue out of repair, and which penalty may be recovered as a debt due to the Crown: sec. 15.

Life-boats,
&c., to be
provided. Sections 16 & 17 provide for the maintaining a well-appointed life-boat by the undertakers (unless under the special Act they need not do so), with a Manby's mortar, a sufficient supply of Carter's rockets, &c.: penalty £2 for every

(*a*) See sec. 73, 10 & 11 Vict. c. 27, *post*, p. 279.

twenty-four hours during which such life-boat, &c., should not be provided.

The undertakers are bound, under sec. 18, to provide a Tide gauge, tide or weather-gauge and barometer; and they are liable, &c. under sec. 19, on failure to make such provision, to a penalty not exceeding £2 for every twenty-four hours during the time the same may not be provided or maintained.

They are also under a further penalty not exceeding £10 for each month they shall neglect to send to the Admiralty a full and true account of the daily workings of such tide-gauge and barometer, and the daily state of the wind and weather: sec. 19.

Under sec. 28, vessels in Her Majesty's service are exempt from rates for the use of the harbour, &c. Any person claiming and taking the benefit of such exemption without being entitled thereto will be liable to a penalty not exceeding £10.

Exemption from rates, and persons wrongfully claiming exemption.

Within twenty-four hours after the arrival of a vessel within the limits of the harbour, dock or pier, the master is to report such arrival to the harbour-master; on failing to do so, he will be liable to a penalty not exceeding £10: sec. 35.

Master to report arrival.

Should the master fail to produce his certificate on demand to the collector of rates, he will be liable to a penalty not exceeding £20: sec. 36.

Master to produce certificate.

The master is to give an account of his cargo unshipped within the limits of the harbour, &c. (sec. 37); on failure to do so, he is subject to a penalty not exceeding £10: sec. 38.

Master to give account of cargo.

Persons shipping any goods on board any ship within the limits of the harbour, dock or pier, shall give the collector of rates a true account, signed by him, of the kinds, quantities and weights of such goods. Every person shipping goods without giving such accounts will be subject to a penalty, for every such offence, not exceeding £10: sec. 39.

Shippers to give account of goods to be shipped.

Any master of a vessel evading the payments of harbour, dock or pier rates, will forfeit to the undertakers three times the amount of the rates of which he shall have evaded the payment, and to be recovered as penalties.

Evading rates.

The undertakers are in each year to make an annual return of their receipts and expenditure for the year ending 31st December (or some other convenient day), and shall send a copy thereof to the clerk of the peace of the county in which the harbour, &c., may be situate; omitting to do so, they will forfeit for every such omission the sum of £20: sec. 50.

Annual account of rates to be returned to the clerk of the peace.

Harbour duties ; masters of ships to comply with rules. Masters of vessels within the limits of the harbour, &c., are to comply with harbour, &c., regulations ; penalty not exceeding £20 : sec. 53.

Misbehaviour of harbour-master, &c. A harbour-master or his assistants exercising any of their powers without reasonable cause, or in an unreasonable or unfair manner, will be liable to a penalty not exceeding £5 : sec. 54.

Bribing officers. Any person bribing, giving or offering a bribe to any harbour officer to induce him to neglect his duty in relation to his office ; penalty for every such offence, £20.

Dismantling vessels. Vessels entering a harbour or dock, or approaching a pier, the master shall dismantle her as the harbour-master shall direct, under a penalty not exceeding £10 : sec. 59.

Entering dock, sails to be lowered. Vessels are to have their sails lowered or furled on entering a dock ; and any master navigating a vessel under sail into or in the dock, for every such offence he will be liable to a penalty not exceeding £10 : sec. 60.

Moorings in dock. Every vessel in the harbour or dock, or at or near the pier, is to be secured with substantial hawsers, tow-lines, or fast fixed to dolphins, booms, buoys, or mooring-posts ; penalty, after notice from the harbour-master to make such mooring, not exceeding £10 : sec. 61.

Cutting moorings. Any person wilfully cutting, breaking, or destroying any mooring or fastening of any vessel lying in the harbour, or dock, or at or near the pier, will be liable to a penalty not exceeding £5 : sec. 62.

Vessels lying near a harbour without permission. No vessel, except with the permission of the harbour-master, shall lie or be moored near the entrance of the harbour or dock, or within the prescribed limits ; a master so doing, and not forthwith removing his vessel when required by the harbour-master, will be liable to a penalty not exceeding £5, and a further sum of twenty shillings for every hour that the vessel shall remain within such limits after a reasonable time for removing the same has expired from such requisition : sec. 63. See *Gardner v. Whitford*, 23 J. P. 358.

Removal of vessel, when repairs required to harbour or dock. When the undertakers require to repair or cleanse the harbour, dock or pier, the master is to remove his vessel therefrom within three days after notice in writing so to do ; on his neglect to comply with such notice, he will be liable to a penalty not exceeding £10 (sec. 64) ; and, under sec. 65, the harbour-master may remove the vessel on such neglect.

Discharge of cargo. The master is to discharge his cargo as soon as conveniently may be after entering the harbour or dock ; and after discharge cause his vessel to be removed without loss of time

into such part of the harbour as may be set apart for light vessels; if the master fail so to remove his vessel after twenty-four hours' notice in writing from the harbour-master, he will be liable to a penalty not exceeding £10, and all expenses of a removal of the vessel by the harbour-master: sec. 66.

Any wharfinger or other servants of the undertakers, or any of their lessees or their servants, giving undue preference, or showing any partiality in loading or unloading any goods on any quays, wharfs, or other works belonging to the undertakers, the person so offending will be liable to a penalty not exceeding £5: sec. 67.

All combustible matters, as tar, pitch, resin, spirituous liquors, turpentine, oil, are to be removed from any quay, dock, or wharf belonging to the undertakers, or from any deck of any vessel within the harbour or dock, or at or near the pier, to a place of safety, within two hours after notice in writing from the harbour-master; and on failure to do so he will be liable to forfeit a sum not exceeding 40s. for every hour such combustibles shall remain in any such place after the expiration of two hours from the service of such notice: sec. 69 (a).

For the following offences the parties offending will be liable to a penalty not exceeding £10, that is to say:—

1. Boiling or heating pitch or other combustibles within the limits of the harbour, dock, or pier.

2. Having fires or lighted candles or lamp in a vessel without permission of the harbour-master.

3. Having any fire, candle, or lighted lamp within any dock, &c., except at such time and in such manner as may be permitted by the bye-laws of the undertakers.

4. Having any loaded gun on the quays or works of the harbour, &c., or in any vessel in the harbour, &c.

5. Bringing without permission or suffering to remain any gunpowder on the quays or works of the harbour or within the dock, or on the pier, or in any vessel within the harbour or dock, or at or near the pier: sec. 71.

The harbour-master may, under sec. 72, enter any vessel in the harbour and search if any offence is being committed under sec. 71; any person obstructing him in the execution of such duty will be liable to a penalty not exceeding £10.

Every person throwing ballast, earth, ashes, stones, or

Wharfingers giving preference.

Combustible matters to be removed.

General penalties.

Obstructing officers.

(a) All combustibles are to be guarded during the night (sec. 70).

ballast into other things into the harbour or dock will be liable for every such offence to a penalty not exceeding £5 (saving the rights of owners of land damaged by the overflowing or washing of any navigable river) : sec. 73.

Licensed
meters. Only licensed meters and weighers are to be employed in weighing or measuring cargoes ; any unlicensed person acting as a meter within the limits of the harbour, &c., will, for such offence, be liable to a penalty not exceeding £5, and the weighing, &c., deemed illegal : sec. 82.

Sections 83 to 90 provide for the making of bye-laws by the undertakers, and which by sec. 89 are to be binding on all parties ; and by sec. 84 such bye-laws may be enforced under such reasonable penalty as the undertakers shall think fit, not exceeding £5 for each breach thereof.

Appeal. By sec. 92, The Railways Clauses Consolidation Act, 1845, with respect to the recovery of damages (not specially provided for) and penalties, and the determination of any other matter referred to justices, is incorporated with this (10 & 11 Vict. c. 27) and "the special Act ;" and, therefore, the special Act being so incorporated, there is an appeal to the quarter sessions under the 157th clause in the Railways Clauses Consolidation Act, by the party aggrieved by any conviction made under the 10 & 11 Vict. c. 27, or "special Act." For the appeal clause, see *infra*, tit. "The Companies Clauses Act ;" and see also the Sum. Juris. Act, 1879, s. 32.

For the rating, see tit. "Poor Rate."

HIGHWAYS.

The several Acts affecting the law relating to highways are :—

5 & 6 Will. 4, c. 50 ; the General Highway Act of 1835 (which came into operation on March 20, 1836).

2 & 3 Vict. c. 45, as to the closing and maintaining of railway gates.

4 & 5 Vict. c. 51, agricultural lands deemed to be enclosed.

4 & 5 Vict. c. 59, the application of a portion of the highway rates to turnpike roads in certain cases.

5 & 6 Vict. c. 55, further provisions as to the closing of railway gates at level crossings.

8 & 9 Vict. c. 71, as to the sale of exhausted parish lands.

12 Vict. c. 14, surveyors of highways to recover costs for distraining for rates.

24 & 25 Vict. c. 70, "The Locomotive Act, 1861."

25 & 26 Vict. c. 61, "The Highway Act, 1862."

26 & 27 Vict. c. 61, Act preventing waywardens contracting for works in their own district.

27 & 28 Vict. c. 101, "The Highway Act, 1864."

28 & 29 Vict. c. 83, "The Locomotive Act, 1865."

39 & 40 Vict. c. 62, "The Sale of Exhausted Parish Lands Act, 1876"—appropriated to supply materials for the repairs of roads.

41 & 42 Vict. c. 77, "The Highways and Locomotives Amendment Act, 1878."

42 & 43 Vict. c. 93, "The Highways Accounts Returns Act, 1879."

By the Act 1862, s. 4, and by the Act 1864, s. 1, the several Highway Acts are included under the short title, *The Highway Acts*. Title,
"The
Highway
Acts."

To save repetition, the principal Highway Acts are referred to in this chapter *as of the year* they were passed.

Highway boards were first formed under sec. 18, Act 1835 (*a*), as corporate bodies with a common seal under the style, "The Board for the Repair of the Highways in the Parish of" The
highway
boards.

The board formed under that section will be elected annually, and act as a board to carry into effect all the powers, authorities, and directions of the Act; and have all and every the powers and authorities given and created by the Act, and granted to or vested in the vestry, and in any person or persons as surveyor, for the purposes of the parish electing such board; and such powers were vested in the persons so elected, or any three of them acting as such board.

The Highway Board will consist of the waywardens elected in the several places within the highway district (sec. 10), and of the justices acting for the county and residing within the district: Act 1862, s. 9, sub-s. 1. The board will be a body corporate, by the name of the Highway Board of the district to which it belongs, with a common seal: sub-s. 2; and any minute of the proceedings at meetings of the board or their committees, if signed by any person purporting to be the chairman of the board or committee, will be receivable in Constitu-
tion of
highway
board
under Act
1862.
A body
corporate.
Minutes
evidence.

(*a*) Prior to March 20th, 1836, the day the Act 1835 came into force, the highways were under the management of local surveyors of highways, nominated by the

vestries and appointed by the justices in special highway sessions held for the division in which the parish was situate.

Meetings
deemed
duly held.

evidence in all proceedings without further proof; and until the contrary be proved, the meetings of the board will be deemed to have been duly held: sub-s. 5.

Qualifica-
tion of the
justice as
a member.

To qualify a justice, *ex officio*, to act on the board, he must be "residing within the district;" the mere occupation of a place of business will not be sufficient. If entitled to be a member of two or more highway boards, he must elect to be on one board, and give notice thereof in writing to the clerk of the board for which he elects to act, and which notice will by him be transmitted to the clerk of the peace of the county. The justice will be bound by that notice, and not qualified to sit at any other board: see sec. 29, Act 1864.

Election of
way-
wardens.

Borough justices will not be qualified to act on the board, nor will the sheriff be qualified: 1 Mary, St. 2, c. 3, s. 8.

For the regulations for the election of the waywardens, see sec. 10, Act 1862: and as to their qualification, see sec. 71, Act 1835, it being the same as that required as to person formerly eligible to be elected a surveyor of the highways.

Though a district may not be known by a defined legal boundary, the waywarden must be elected by the inhabitants of that part, and not by those of the whole parish: see *R. v. Gascoign*, 29 J. P. 389: see also *R. v. Dix*, 30 J. P. 390. *Quo warranto* will lie for the office. As to the proper notices on the election of a waywarden, see *R. v. Cooper*, L. R. 5 Q. B. 457; 39 L. J. Q. B. 273.

He will continue in office until his successor is appointed, and is eligible for re-election: sec. 10, Act 1862.

First
meeting of
the high-
way board.

The first day for the meeting of the Highway Board will be the day of the formation of the district: Act, 1864, s. 10, repealing sec. 5, Act 1862: see also s. 40, *ib.*; *R. v. Lindsey*, 35 L. J. M. C. 90; L. R. 1 Q. B. 68; 6 B. & S. 892.

The clerk.

The clerk to the board has his duties prescribed by sec. 15, Act 1862; and besides attending the meetings and keeping the minutes, &c., he is to "perform all such other duties as the board may direct."

The sur-
veyor.

The surveyor (sec. 16, Act 1862) is to act as the agent of the board in carrying into effect all the works and performing all the duties required by the Act to be carried into effect by the board, and in all respects he is to conform to the orders of the board in the execution of his duties (*a*).

Under sec. 6, Act 1878, two or more highway districts

(a) These words will not excuse him on doing an unlawful act: L. R. 10 Ex. 92; 73 L. T. 177, Ex. Ch.
Mill v. Harker, 44 L. J. Ex. 49;

may unite in appointing and paying a district surveyor with all the powers of a district surveyor under the Highway Acts.

Under the Public Health Act, 1875, sec. 144, every *urban* Urban authority within their district, exclusively of any other person, will execute the office, and be surveyors of highways surveyors of highways. (a); and have, exercise, and be subject to all the powers, authorities, duties and liabilities of surveyors of highways under the law for the time being in force, save only where they are or may be inconsistent with that Act.

And every urban authority will also have, exercise and be subject to all the powers, authorities, duties and liabilities And act as the vestry. which by the Highway Act, 1835, or any Act amending the same, are vested in and given to the inhabitants in vestry assembled of any parish within their district.

All ministerial acts required to be done by or to the Ministerial surveyor of highways may be done by or to the surveyor of acts by the urban authority, or by or to such other person as they surveyor. may appoint: Public Health Act, 1875, sec. 144.

Upon the requisition of five or more justices of the county Highway (two of whom, under Act 1864, sec. 6, must be resident in districts. the district, or acting in the petty sessional division in which the proposed district, or some part thereof, is situate), the court of general or quarter sessions may divide the county, or some part thereof, into highway districts (see Form (A.), Schedule to Act 1862): sec. 5, Act 1862.

By sec. 39, Act 1862, the highway district may from time to time be altered by "the county authority" (b) by the Alterations of high- addition or subtraction of any parishes by provisional way and final (c) orders of the justices, and for which the notice districts. required under sec. 5 must be followed. See also Act 1864, sec. 14.

Under the Act 1878, sec. 3, the county authority—the Highway justices in general or quarter sessions, sec. 38, Act 1878—are district directed, in forming highway districts, to have regard to the to be co- boundaries of the rural sanitary districts in their county, incident and are to form highway districts so as to be coincident in in area area with rural sanitary districts (see Public Health Act, with 1875), or to be wholly contained within them. sanitary districts.

Where a highway district, whether before or after the Act Rural

(a) As to appointment of surveyors of highways, see sec. 25, Act 1878; Act 1835, ss. 6, 10; Act 1862, s. 11.

quarter sessions, sec. 38, Act 1878.

(c) This means an order published in accordance with the Act.

(b) The justices in general or

See Act 1864, s. 18.

authority as the highway board. 1878, is or becomes coincident in area with a rural sanitary authority, such authority may apply to the county authority stating their desire to act as the highway board within their district. And the county authority may by order declare from and after a day named (to be called the commencement of the order) such rural authority shall exercise all the powers of a highway board, and from the commencement of such order the existing highway board for the district will be dissolved; and the waywardens and surveyors will cease to hold office: sec. 4.

Where district in more than one county. Where the highway district, coincident in area with the rural sanitary district, is situate in more than one county, the order to form it under this section may be made to the authority of either county, but will be of no force until approved of by the authority of the other county (*ib.*)

Amending order. There is given a power, in a similar manner, to amend, alter or rescind the order (*ib.*)

Vesting powers in local authority as a highway board. By sec. 5, all such powers, rights and duties, liabilities, capacities and incapacities (except the power of obtaining payment of their expenses by the issue of precepts in manner provided by the Highway Acts, or the power of making, assessing, and levying highway rates) as are vested in or attached to the highway board, or any surveyor or surveyors of any parish forming part of the district, shall vest in and form part of the rural sanitary authority.

Condition precedent to formation of a highway district. It was held to be a condition precedent (under the Act 1862) to the formation of a highway district, or any alteration of one, that a notice thereof be sent to the churchwardens and overseers of every parish proposed to be included in such highway district. An omission so to do rendered the order invalid: *R. v. Sussex*, 28 J. P. 469. But see now Act 1864, sec. 16, "an order containing a prohibited place shall be construed to take effect *as if that place had not been mentioned therein.*"

Places separately maintaining their own highways. By sec. 5, Act 1864, any parish, township, tithing, hamlet, or other place of a known legal boundary in which there are no highways repairable at the expense of the place, or in which the highways are repaired at the expense of any person, body political or corporate, by reason of any grant, tenure, or appointment of any charitable gift or otherwise howsoever than out of a highway-rate or other general rate will, for the purposes of the Highway Acts, be deemed to be a place separately maintaining its own highways.

Part of parish. Also by the same 5th sec., where part of a parish (under the Local Government Act, 1858, Amendment Act, 1861,

sec. 9), is treated as forming part of a district constituted under the Local Government Act, 1858, for the purpose of the repairs of the highways and payment of highway-rates, but for no other purpose, such part shall for the purposes of the Highway Act, 1862, and "*this Act*" (1864), be deemed a place separately maintaining its own highways, and capable of being included in a highway district without the consent of the Local Board.

Where the highways of one part of a parish are, in pursuance of a private Act, repairable out of a different rate from that out of which the highways of the other part are repairable, *each* of such parts shall, *for the purposes of the Highway Acts*, be deemed to be a place separately maintaining its own highways.

Extra parochial places (or highway parishes) are for all civil parochial purposes annexed to and incorporated with the next adjoining parish with which they have the largest common boundary (*b*): 31 & 32 Vict. c. 122, s. 27.

By sec. 8, Act 1864, where a parish or place separately maintaining its own highways is situate partly within and partly without the limits of a borough, the justices may by their provisional and final order (*c*) include in a highway district the outlying part of such parish or place; and such outlying part will be deemed to be a place separately maintaining its own highways, and a waywarden may be elected.

For the annexing contiguous places with an adjoining county (*d*) there must be concurrent or subsequent provisional orders to the same effect made by the justices of every other

(*a*) By sec. 9, the justices may in petty sessions appoint overseers or otherwise deal with any extra parochial place with the view of constituting it a highway parish or part of a highway parish, in the same manner as they may deal with such place respecting the maintaining its own poor under 20 Vict. c. 19; see *R. v Lancashire*, 2 L. J. M. C. 244.

(*b*) There are some few outlying parts of parishes which are in two counties—as, for instance, North Woolwich in Essex, which is a part of the parish of Woolwich in Kent, and having the Thames intervening; as to such a case, see sec. 13, Act 1864.

(*c*) These orders may be made without the consent of the council of the borough, or of the vestry of the parish to be included in the order, as was formerly the case under Act 1862, sec. 7.

As to the making a borough, having a non-intromittent clause under ancient charters, but not within the exceptions in sec. 2, Act 1862, part of a highway district of the adjoining county, as was done in the case of the borough of East Looe, Cornwall, see *Giles v. Glubb*, 13 L. T. 526.

(*d*) Where there is an appeal *against accounts* from places situate in different counties, and places situate partly in one county

county in which any part of such place is situate: see Act 1864, s. 13.

Section 33, Act 1862, provides for the annexing outlying parts of a parish to an adjoining district, and where so annexed it will be deemed to be a parish separately maintaining its own highways: see also extra-parochial places, sec. 32.

The urban authorities. Under the Public Health Act, 1875, sec. 6, the urban authority will be:—

In a borough; the mayor, aldermen, and burgesses acting by the council.

In an Improvement Act district, and having no part of its area situate within a borough or local government district; the improvement commissioners.

In a local government district, having no part of its area situate within a borough, and not coincident in area with a borough or improvement district; the local board.

The rural authority under the Public Health Act, 1875. The area of a union not coincident in area with an urban district, and excepting those portions included in the urban district, will be the rural district, and the guardians the rural authority: Public Health Act, 1875, 38 & 39 Viet. c. 55, s. 9.

Urban sanitary "district" and "authority;" exception in Act, 1878. "Urban sanitary district" and "urban sanitary authority" mean respectively the districts and authorities declared to be so by the Public Health Act, 1875; *except* that, for the purposes of the Act (1878), no borough having a separate quarter sessions, and no part of any such borough, shall be deemed to be included in any such district; and where part of a parish is included in such district for the purposes only of the repairs of the highways, such part shall be deemed to be included in the district for the purposes of the Act (1878): see *ante*, sec. 7, Act 1862, and sec. 8, Act 1864.

The following are *highway areas*:—

1. Urban sanitary districts.
2. Highway districts.
3. Highway parishes not included in any highway district or any urban sanitary authority: Act 1879, sec. 14.

Definitions of "county," "division," and "limit." It will be important to bear in mind the definitions of the terms used in "The Highway Acts" of "county," "division," "limit."

and partly in another, it will be subject to the jurisdiction of the county in which the district is situate to which such place had

been annexed by the provisional order, or to which, after the Act of 1864, it should be declared annexed: Act 1864, s. 44.

There is no definition of county in the Act 1835; it is "County" there left to its ordinary common law application. Act, 1835.

The first definition of county is in the Act 1862, sec. 2, Act 1862. which has reference to the formation of highway districts, and is confined to *that* Act. It is there declared *not* to include a "county of a city" or a "county of a town;" but when a county, "as hereinbefore defined," (*a*) is divided into ridings or other divisions having a separate court of quarter sessions of the peace, it shall mean each such riding or division, and not the entire county; and for the purposes of *the* Act, all liberties and franchises, except the liberty of St. Allans, which shall be considered a county, and except boroughs, as hereinafter defined, shall be considered as forming part of that county by which they are surrounded (*b*); or if partly surrounded by two or more counties, then as forming part of that county by which they have the largest common boundary; the borough here meaning a borough under 5 & 6 Will. 4, c. 76, or any place to which the provisions of that Act have been extended.

"County," under the Act 1878, sec. 38, has the same meaning as it has in the Highway Act, 1862 and 1864; *except* that every liberty not being assessable to the county rate of the county or counties within which it is really situate, shall, for the purposes of the Act, other than those relating to the formation and alteration of highway districts, and the transfer of the powers of the highway board, be deemed to be a separate county.

The term "county" will, under Act, 1864, s. 3, include any division of a county to which a separate treasurer is appointed (*c*). Such a division would come within the definition of "limit" in the Highway Act as having a separate

(*a*) This must mean *negatively* defined as not being "a county of a city, or a county of a town."

(*b*) Chartered towns, not included under the Municipal Corporation Act, 1835, such as Queenborough, Kingston, &c., would form a part of the county under the above definition: see *East Loec (Mayor) v. Cornwall, Clerk of the Peace*, 3 B. & S. 20; 31 L. J. M. C. 245; *Weir v. Deron, Clerk of the Peace*, 6 B. & S. 7; 34 L. J. M. C. 47; see also *Giles v. Glub*, 13 L. T. 526.

(*c*) No provision is made in

the Act 1864 for the nominating any additional Lord-Lieutenant; or that there shall be any second Clerk of the Peace. The Clerk of the Peace is the officer of the Lord-Lieutenant, or *Custos Rotulorum*, and acts as his deputy at the quarter sessions, as well as being the officer of the *Court of Quarter Sessions*; there could be no reason against his appointing another clerk of the peace or deputy to act in the court of the newly-created division, or "limit" of the county.

and independent jurisdiction from that of the county at large.

See remarks of Pattison, J., in *R. v. Suffolk*, *post*.

“Division” “Division” will include “limit.”

and
“Limit” The interpretation to be put upon the term “limit” in these Acts, and particularly as used in the 82nd, 85th, and 88th sections of the Act 1835, will be seen hereafter to have an important bearing on the selection of the jurisdiction to assess the compensation for the taking of land or the widening a highway under sec. 82, or for the stopping up, &c., a highway under secs. 84 and 85, or to which an appeal will be made under sec. 88.

R. v. Suffolk, 5 D. & L. 558; 17 L. J. M. C. 143, has been frequently quoted as explaining the interpretation of “limit.” The question there was:—was an *adjourned* sessions held for a division of a county (such division being merely created by the justices for the greater convenience of transacting the public business), to be taken to be as an *original* sessions held for the division, and from the first day of which the parties could date their proceedings for the lodging with the clerk of the peace the certificate of the justices for the stopping up the highway, acting on the assumption that such a division of the county was *the limit* within which the highway lay.

But Pattison, J., held, that such division of the county was *not* within the meaning of the term *limit*; and that the certificate should have been lodged with the clerk of the peace, at a time dating as from the first day of the *original* sessions for the county at large, and not that of any adjournment thereof (*a*); and Pattison, J., further remarked, that he was “inclined to think the term ‘limit’ referred to places where there were different jurisdictions, where distinct and original courts exist in each for the ‘limit.’”

There is no definition of *limit* in the Act 1835, nor in the repealed highway statutes, 13 Geo. 3, c. 78; or 55 Geo. 3, c. 68.

The term
“limit”
prior to
1835.

But in the statute 13 Geo. 3, c. 78, the term *limit* is frequently used, as well as in 55 Geo. 3, c. 68, and which Acts were in full operation at the time of the passing the Act 1835, and for six months subsequently, until the Act of 1835 came into operation.

The application of the word *limit* had therefore been long well understood, and had been then only recently used in

(*a*) See *R. v. Sussex*, 7 T. R. 107; *R. v. Sussex*, 34 L. J. M. C. 69; 2 B. & S. 683; *R. v. Lancashire*, 34 L. T. 124; *R. v. Lancashire*, 27 L. J. M. C. 161; 30 L. T. 149, S. C. *eo nom.* *Swift v. Lancashire*, 22 W. R. 76; *R. v. Draughton* (n), 2 B. & S. 683.

other statutes of the same session, as in the Parliamentary Boundaries Act, 2 & 3 Will. 4, c. 64, "to settle and describe the divisions of counties, and the *limits* of cities and boroughs," &c., and adopted in the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, and in which the terms "divisions" and "limits" were clearly used to indicate separate and independent jurisdictions.

The following may be selected as instances where "limit" is used in the former Highway Act, 13 Geo. 3, c. 78 :—

In sec. 1 the constable is directed to send a copy of the list of persons chosen to serve as constables to one of the justices "within the *limit* of the county, riding, division, hundred, city, precinct, or liberty *where* the parish should lie." And return the original list to the justices in special sessions, to be held for the highways for *that* "*limit*."

Instances of the use of "limit" in 13 Geo. 3, c. 78.

In sec. 71 justices are directed to hold their special sessions "*within* their respective *limits*."

Sec. 16 gave power to widen a highway. It is on that section, the 82nd clause of the Act 1835, was evidently framed. The proceedings under sec. 16 were to be on the view of two justices, referring to them as "the *said* justices;" that is, the justices mentioned in sec. 1, 13 Geo. 3, c. 78, as justices *acting* "*within the limit* of the county, riding, division, hundred, city, precinct, or liberty." And the compensation to be made for land taken, in case of no agreement being made for the transfer, was to be determined at "*the quarter sessions, to be holden for the limit wherein the ground should lie*." And the amount of compensation awarded was to be paid "*to the clerk of the peace of such limit*." See also sec. 2, 55 Geo. 3, c. 68 (Highway Act).

13 Geo. 3, c. 78, s. 16, as to the widening a highway compared with s. 82 of Act 1835.

Sec. 19 of 13 Geo. 3, c. 78, and sec. 2 of 55 Geo. 3, c. 68 provide for the diverting, turning, or stopping up a highway. The proceedings were different to those under secs. 84 and 85, Act 1835. A highway was then diverted, &c., by an *order* of special highway sessions; but the party aggrieved had his right of appeal by virtue of an inquisition under a writ *ad quod damnum*, "*to the next quarter sessions holden for the limit where the highway should lie*."

Proceedings under 13 Geo. 3, c. 78, s. 19, and 55 Geo. 3, c. 68, s. 2, for diverting a highway—as compared with ss. 84, 85, Act 1835.

Upon the justices making their certificate of the new way being completed to their satisfaction, such certificate was returned to the clerk of the peace, "*to be enrolled amongst the records of the said Court of Quarter Sessions*;" that is, "*the sessions holden for the limit wherein the highway should lie*." This section was amended by sec. 2, 55 Geo. 3, c. 68, which provided that after the notices (which were required

by that section to be published, and which are similar to those introduced into sec. 85, Act 1835) had been published, the *order* (not the certificate, as now under Act 1835) at the quarter sessions, to be holden "*within the limit* where the highway, &c., shall lie," was to be returned to the clerk of the peace *in open court, and lodged with him*; and the "*order*" at *such* quarter sessions was to be confirmed, and by the clerk of the peace enrolled amongst the records of the *said* court of quarter sessions. It was the record of such an "*order*" that was in question in *R. v. Gloucestershire J.J.*, 4 A. & E. 689, *ante*, p. 9, under tit. "The Recorder and his Court."

Appeal
under 13
Geo. 3,
c. 78, s. 81,
and 55
Geo. 3,
c. 68, s. 3.

Under sec. 81, 13 Geo. 3, c. 78, and sec. 3, 55 Geo. 3, c. 68, the person aggrieved on an inquisition, under a writ *ad quod damnum*, might "appeal to the quarter sessions to be held for the *limit*" wherein the cause of complaint arose. (Compare secs. 82, 91, and 105, of Act 1835.)

The application of the term *limit*, in the statutes, 13 Geo. 3, c. 78, and 55 Geo. 3, c. 68, as before set out, clearly defines its application and meaning, and points to distinct and original jurisdictions, and to which there might be attached separate courts of quarter sessions, whether as of the "*limit of a county*," &c., or the "*limit of a city*," &c.; such court of the "*limit*" having its own clerk of the peace. The language of the statutes was, no doubt, present to the mind of Pattison, J.; and it certainly fully confirms the opinion expressed by him in *R. v. Suffolk* (*supra*), that the term "*limit*" had reference to an independent jurisdiction; and *R. v. Gloucestershire* (*supra*) may again be referred to as upholding the highway jurisdiction of the "*limit*" of a city, that case having been decided on the statute 55 Geo. 3, c. 68.

Observa-
tions of
Parke, B.,
on the
jurisdic-
tion of a
"*limit*."

Further, as to the application of the term "*limit*," reference may be made to *Beaulsworth v. Torkington*, 1 Q. B. 780; *Dorchester v. Eusor*, L. R., 4 Ex. 335; *Corentry (Mayor) v. Lythall*, 10 M. & W. 780; in which last case Parke, B., said, "Certain liberties and large tracts of land beyond the *limits* of the town had been included within the *boundaries* of the borough;" and at p. 177, the learned Baron speaks of "the limits of the franchise." "*Limit*" may there be considered, as applied by Parke, B., to indicate the franchise or jurisdiction; and "*boundary*," the area of the town. See also sec. 7, Act 1862, referring to a parish "*within the limits of a borough*;" and see Act 1864, s. 8.

"Division

In the definition clause, Act 1835, s. 5, it is enacted, "Divi-

sion shall be understood to include limit." For explanation of this definition, further reference may be made to 13 Geo. 3, c. 78, sec. 1; and as the terms were understood in 1835, "division" is there used with "riding," and clearly meaning a jurisdiction.

Ejusdem generis with "county," and with each of which "limit" is associated:—As "the limit of county," "the limit of a division," "the limit of a riding;"—these "limits" having separate quarter sessions, which may be independently held as for an original jurisdiction, as referred to by Pattison, J., in *R. v. Suffolk* (*supra*), supported as it is by the judgment in *R. v. Gloucestershire* (*supra*), and remarks by Parke, B. (*supra*).

Justices,—will include justices of the county, riding, division, shire, town, borough, liberty, or place in which the highway may be, Act 1835, s. 5. "Justices."

Borough,—under sec. 38, Act 1878, is defined to mean any place for the time being subject to the Municipal Corporation Acts. And also as to excepted boroughs, see Act 1862, s. 2; see also *ante*, Tit. Recorder. "Borough."

Parish,—will include, parish, township, tithing, rape, vill, wapentake, division, city, borough, liberty, market town, franchise, hamlet, precinct, chapelry, or any other place or district maintaining its own highways; and wherever anything is prescribed to be done by the inhabitants in vestry assembled (*a*), the same shall extend to any meeting of the inhabitants contributing to the highway rates in places where there shall be no vestry meeting, provided the same notice be given as required for the assembling a meeting of the vestry: Act 1835, s. 5. "Parish."

Under the Act 1862, s. 3, *parish* is defined to include any place maintaining its own highways.

Extra Parochial places are where, in pursuance of 20 Vict. c. 19, any place is declared to be a parish, or where overseers of the poor are appointed; such place will be deemed to be a place maintaining its own highways. And where, in pursuance of the same Act, any place is annexed to an adjoining parish, or to any place in which the relief of the poor is administered under a local Act, such place will, for the purposes of the Highway Acts, be deemed to be annexed to such parish or district for the purposes of the maintenance of the highways, as well as those of the Act mentioned, Act 1862, s. 32. And see 20 Vict. c. 19, ss. 1, 4, 8; see also *R. v.* "Extra Parochial places."

(a) See sec. 144, Public Health Act, 1875.

Central Wingland, 2 Q. B. D. 349 ; 46 L. J. M. C. 282 ; 36 L. T. 798 ; 25 W. R. 876.

Under 31 & 32 Vict. c. 122, s. 27, extra parochial places will, for all civil purposes, be annexed to and incorporated with the next adjoining parish with which they may have the largest common boundary. There will also be annexed to and incorporated with the parish adjoining accretions from the sea, whether natural or artificial, and the part of the sea to low water mark : see *Blackpool Pier Company v. Fylde Assessment Com. and Leyton Warbeck Overseers*, 46 L. J. M. C. 180 ; 36 L. T. 251 ; so also there will be annexed the part of a river to the middle of the stream. See *post*, "Poor Rate."

Outlying
part of
parish
may be
annexed

Under sec. 33, Act 1862, where a part of a parish is not contiguous to the parish of which it is a part, such outlying part may be annexed by the justices to a district, and then be deemed to be a parish maintaining its own highways. This annexation may take place where the highway district is formed under Act 1864, secs. 5 & 6.

"High-
ways."

Highways will be understood to mean all roads, bridges (not being county bridges), carriage ways, cart ways, horse ways, bridle ways, footways, causeways, church ways and pavements : *ib.* : see also *Chapman v. Robinson*, 1 E. & E. 25 : Act 1835, s. 63.

Where the access to a road at either end, has become impossible by reason of the ways leading up to it having been lawfully stopped up, such road ceases to be a "public highway:" *Bailey v. Jamieson*, 1 C. P. D. 329 ; see also *R. v. Waller*, 31 L. T. 777, Q. B. ; *Souch v. East London Ry. Co.*, L. R. 16 Eq. 108 ; 42 L. J. Ch. 477 ; 21 W. R. 590, V. C. M. : these later cases holding a cul de sac may still be a public highway.

To create a highway by statute, the provisions creating it must be strictly followed : *Cubit v. Marse*, L. R. 8 C. P. 704 ; 42 L. J. C. P. 278 ; 29 L. T. 244 ; 21 W. R. 789.

As to disturnpiked roads being declared "main roads," and as to county highways, see Act 1878, sub ss. 13—15.

"Highway
district"
and
"board."

The terms "highway district" and "highway board" will refer only to highway districts formed and highway boards constituted under the Highway Acts : Act 1864, s. 3.

Highway Board—is the board having jurisdiction within a highway district.

"Highway
parish."

Highway Parish—is a parish or place included, or capable of being included, in a highway district, under Act 1834, or Act 1864 : Act 1878, s. 38.

"Highway
authority."

Highway Authority,—as respects an *urban* sanitary district, will be the *Urban* sanitary authority ; as respects a

Highway District, the Highway Board; and as respects a *Highway Parish*, the surveyors or other officers performing similar duties: Act 1878, s. 38.

Highway Rate—will be *any* rate out of the produce of “Highway which monies are payable to satisfy the precept of a high-rate.” way board.

Since the recent Acts repealing the Turnpike Acts, and “Main thereby reverting the “turnpike roads” into public high-roads,” ways, but without the means of maintenance by means of under Act “tolls” payable at the “gates,” it became necessary to pro- 1878, vide other funds for their maintenance, and this was done by the Act 1878, ss. 13—20.

When it appears to the highway authority that *any* Declaring highway within their district ought to become a main road roads as by reason of its being a medium of communication between “main great towns, or a thoroughfare to a railway station or other- roads,” wise, the highway authority may apply to the county authority for an order declaring such road, as to such parts, to be a main road; and the county authority, if of opinion there is probable cause for the application, will cause the road to be inspected, and if satisfied the road ought to be a main road, will make an order accordingly: sec. 15.

This application for the order is made to the quarter sessions, where the matter is usually referred to the finance committee for its report, which is brought before the next subsequent sessions, when the final order is made; *post*, p. 303.

When the order is made it is to be forthwith deposited Order to with the clerk of the peace of the county, and be open to be con- inspection. But such order is to have no effect unless and firmed. until confirmed by a further order of the county authority made within not more than six months after the making the first order: sec. 15.

Where a turnpike road is situate in more than one county, Where such road, for the purposes of the Act, will be treated as a turnpike separate turnpike road in each county through which it road in two passes: sec. 17. counties.

Primâ facie the inhabitants of a parish are of common Repair of right bound to repair all highways lying within it, unless highway, by prescription they can throw the onus on particular per- and who sons by reason of their tenure; this is by exception to the liable. general rule: *R. v. Sheffield* (Ashurst, J.), 2 T. R. 106: *R. v. Midville*, 4 Ad. & E. (N.S.) 240; one parish may be bound to repair a highway lying within another parish, for which the obligation must arise in respect of some consideration of a nature as durable as the burthen cast upon them; Lord

Ellenborough : *R. v. St. Giles, Cambridge*, 5 M. & S. 265. In *R. v. Ashby Folville*, 35 L. J. 154, Cockburn, C. J., referred to *Dawson v. Willoughby*, 34 L. J. M. C. 37, in which it is remarked : "It may in some cases happen that a parish may be bound to repair the highways in a part of another parish, if a good and continuing consideration for such an obligation can be shown ;" and in giving judgment the C. J. said : "The only positive authority which the court was able to discover, that, by prescription, one parish was bound to repair highways in another parish was the passage in *R. v. Ragley*, 12 Mod. 409, in which Holt, C. J., said : 'The parish ought of common right to repair their highway ; but, by prescription, one parish may be bound to repair the way in another parish.' The dictum in question, therefore," said Cockburn, C. J., "if it ever fell from the C. J., which, looking to the looseness of the report, may be thought doubtful, was altogether unnecessary to the decision of the case, and does not seem an authority to justify the holding that such a liability can exist." And it was held as clear, "that if a parish can be liable to repair the roads in another parish, such liability must date beyond the time of legal memory." Where there are several townships in one parish, see *R. v. Ecclesfield*, 1 B. & Ald. 348.

A parish cannot be rid of the liability to repair by an agreement.

Not to be liable for repairs out of district.

New roads may be adopted.

Expenses incurred in repairs of highways charged on district fund.

A parish which is bound to repair the highways cannot be discharged of its liability by any agreement with others : *R. v. Liverpool*, 3 East, 86. Nor where the burthen is transferred to commissioners under Act of Parliament : *R. v. St. George's, Hanover Square*, 3 Camp. 222 ; and see *R. v. Netherthong*, 2 B. & Ald. 179.

Under the Public Health Act, 1875, s. 145, the inhabitants of one district are not to be liable for the making or repairing roads or highways without their district.

By sec. 146, the Urban authority may make or adopt new roads which on completion, may become public highways repairable by the inhabitants.

All expenses incurred by any highway board in maintaining and keeping in repair the highways of each parish within their district, and all other expenses legally incurred by such board shall, notwithstanding anything contained in the Highway Acts after the 25th March, 1879, be deemed to have been incurred for the common use or benefit of the several parishes within their district, and shall be charged on the district fund : provided, that if a highway board think it just, by reason of natural differences of soil or locality, or

Exceptions. other exceptional circumstances, that any parish or parishes

within their district should bear the expenses of maintaining its or their own highways, they may (with the approval of the county authority or authorities of the county or counties within which their district or any part thereof is situate) divide their district into two or more parts, and charge exclusively, on each of such parts, the expenses payable by such highway board in respect of maintaining and keeping in repair the highways situate in each such part: so, nevertheless, that each such part shall consist of one or more highway parish or highway parishes: Act 1878, s. 7.

Where the highway district is situate in more than one county, the provisions of the Act 1878, with respect to the expenses of the maintenance of *main roads*, shall apply as if the portion of such district situate in each county were a separate highway district in that county: Act 1878, s. 19.

Under sec. 32, Act 1864, any expenses incurred by the highway board for the common use or benefit of the several parishes within the district, will be annually charged on the district fund, and charged on the several highway parishes within the district in proportion to the rateable value of the property in each parish; but the expenses of maintaining and keeping in repair the highways of each highway parish within the district, and all other expenses legally payable by the highway board in relation to such parish, including any sums of money that would have been payable out of the highway rates of such parish if the same had not been part of a highway district, except such expenses as are by the Act (1864) authorised to be charged to the district fund, shall be a separate charge on each parish. As to the liability of the inhabitants of a hamlet the owners and occupiers in which had never repaired any highways, having no public roads which could be repaired, being liable to contribute to the repairs of highways out of its limits, see *R. v. Rollett*, L. R. 10 Q. B. 469; 44 L. J. M. C. 190; *eo nom. Rollett v. Corringham*, 32 L. T. 769.

Costs of an indictment for the obstruction of a highway are properly chargeable to the parish where the highway lay: *R. v. Heath*, 6 B. & S. 578.

Surveyor's charges made in his accounts which are illegal under sec. 46 of the same Act, cannot be allowed: *Barton v. Piggott*, 44 L. J. M. C. 5; L. R. 10 Q. B. 86. Nor can the expenses incurred in opposing a bill in Parliament be allowed, although the bill affected some of the parishes in the district, and the opposition might be successful: *R. v. The Kingsbridge Highway Board*, 18 L. T. 554; 32 J. P. 372.

Maintenance of "main roads" where highway district in more than one county. Expenses of highway board for common use of several parishes.

Non-liability of a hamlet.

Costs of indictment for obstructing a highway. Illegal charges not allowed.

- Accounts of highway authority when to be made up. The accounts of the highway authority are now to be made up in each year to the 25th March, and audited by the Local Government Board auditor of accounts relating to the relief of the poor; and any person aggrieved by his decision will have the same rights and remedies as in the case of the audit of poor law accounts, Act 1878, sec. 9; 38 & 39 Vict. c. 55, s. 247.
- Appeal on accounts to L. G. B. There is an appeal to the Local Government Board on any disallowance, reduction, or surcharge, or to the High Court by means of a writ of *certiorari*; 38 & 39 Vict. c. 55, s. 247, sub-ss. 6, 8; see also 27 & 28 Vict. c. 101, ss. 32, 35, 36; *R. v. Halifax*, 10 L. J. M. C. 81; *R. v. Sanders*, 3 E. & B. 778; *R. v. Calthorpe*, 4 B. & S. 228; *R. v. Knott*, 15 L. T. 291; see also *Barton v. Piggott*, L. R. 10 Q. B. 86 (a).
- Assessment for rate. The rateable value of the property in each parish will be in accordance with the valuation list or other estimate in force in each parish for the purposes of the poor-rate; or, if no valuation list or estimate be in force, then in such manner as may be determined by the justices in petty sessions, subject to an appeal, by any person aggrieved, to the next general or quarter sessions: Act 1864, s. 32. (See 25 & 26 Vict. c. 103; 27 & 28 Vict. c. 39.)
- Form of rate. The amount of the assessment should appear on the face of the rate, so that the ratepayers may see how much is for the maintenance of the poor, and how much for the repairs of the highways; and why one occupier is charged with the aggregate, and another, who is liable to one only, with that one. By the creation of highway districts the liability to highway maintenance has not been altered, but only the area of management extended, equalising the cost of repair, and simplifying the machinery for providing the necessary funds; and where, under sec. 33, Act 1835, lands would have been exempted from the maintenance of the highway they are still exempted, although the poor-rate be substituted for the highway rate: *R. v. Heath*, 35 L. J. M. C. 113; L. R. 1 Q. B. 218; 7 B. & S. 285.
- Highway district extends only area. The waywardens will levy by a separate rate, but, before it will be payable, it must have been published (b) in the manner in which rates for the relief of the poor are required to be published. (See 1 Vict. c. 45, s. 2.)
- Publication of rate to be first made.

(a) A case may be stated under 22 & 23 Vict. c. 43, as in *Townsend v. Read*, 30 L. J. M. C. 223. There is still the appeal to quarter sessions.

(b) See 45 & 46 Vict. c. 20, *R. v. Dyott*, *post*, p. 316, n.; publication to be in some conspicuous place where there is no parish church. p. 302, n.

The rate is only to be published; it will not be required to be "allowed" by the justices. By 5 & 6 Will. 4, c. 50, s. 27, a highway rate would have to be allowed by two justices, as well as published. It is not to exceed ten pence in the pound, or two-and-six pence on the whole year, except with consent of four-fifths of the ratepayers.

Where the precept is addressed to the overseers the sum will be payable out of the poor-rate, or out of monies applicable to the relief of the poor: Act 1864, s. 33. The precept.

The mode of obtaining payment from the several highway parishes is regulated by s. 33, Act 1864, and is by precept addressed to the waywardens or overseers, as directed by that section. See Act 1878, s. 5. Payment of rates.

If any person feels himself aggrieved by any rate, levied by any waywarden under s. 33, Act 1864, under a precept from a highway board on the ground of incorrectness in the valuation of any property included in the rate, or of the inequality or unfairness of the sum charged on any persons therein, he may appeal to the justices in special sessions, as provided by 6 & 7 Will. 4, c. 96, ss. 6 & 7: Act 1864, s. 37. Appeal to special sessions.

By s. 38, Act 1864, where any waywarden of a highway parish of a district, or any ratepayer of such parish, feels aggrieved in respect of the following matters— Appeal to quarter sessions, Act 1864, s. 38.

1. In respect of any order of the highway board for the repair of any highway in his parish, on the ground that such highway is not legally repairable by the parish, or in respect of any other order of the board, on the ground that the matter to which such order relates is one in regard to which the board have no jurisdiction to make the order;

2. In respect of any item of expense charged to the separate account of his parish, on the ground that such item of expense has not in fact been incurred, or has been incurred in respect of a matter upon which the board have no authority by law to make any expenditure whatever;

3. In respect of any item of expenditure charged to the district fund, on the ground that such item of expense has not in fact been incurred, or has been incurred in respect of a matter upon which the board have no authority to make any expenditure whatever. See *Barton v. Piggott*, 44 L. J. M. C. 5; 10 L. R. Q. B. 86; 31 L. T. 404;

4. In respect of the contribution required to be made by each parish to the district fund, on the ground that such amount, when compared with the contribution of other parishes in the district, is not according to the proportion required by the Act (see sec. 32):—he may, upon complying

with the conditions mentioned in sec. 39, appeal to the general or quarter sessions having jurisdiction in the district ; but no appeal shall be heard in respect of any exercise of the discretion of the board in matters within their discretion ; and no appeal shall be had except in respect of matters and upon the grounds hereinbefore mentioned.

Conditions of appeal. No appeal shall be entertained by any court of general or quarter sessions in pursuance of the Act (1864) unless the following conditions have been complied with :—
Act 1864, s. 39.

1. Notice of the intention to appeal must be served by the appellant on the clerk to the highway board, in the case of an appeal against an order, within *two* months after the order ; and in case of an appeal in respect of any item of expense or contribution, within *one* month after the statement of the account of the board has been sent to *each* member of the board as hereinbefore mentioned. (See sec. 36, sub-sec. 4.)

2. The notice must state the matter appealed against, and the ground of the appeal.

Highway board may rectify rate. On the receipt of the notice of appeal, the board may serve a counter notice on the appellant, requiring him to appear in person, or by his agent, at the next meeting of the board, and support his appeal. On hearing the appellant, the board may rectify the matter complained of, and if they do so to a reasonable extent, and tender to the appellant a reasonable sum for the costs of his attendance, the appellant cannot proceed further with his appeal. In any other case the appellant may proceed with his appeal, and the reasonable costs of his attendance on the board shall be deemed part of the costs of the appeal.

Appeal may proceed.

Arbitration. Act 1864, s. 40. After notice of appeal has been given, where the matters in dispute are questions of account which cannot be satisfactorily tried by the Court, the Court may order the appeal to be referred to arbitration : see. 40, Act 1864. And the provisions of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125, ss. 3—17), relating to compulsory references, are extended to arbitrations directed by the quarter sessions ; and the word “ Court ” in that Act is to include the court of quarter sessions : see. 41, Act 1864.

Proceedings on appeal.

Jury to decide

If upon the hearing of the appeal it appears to the Court that the question in dispute involves an inquiry as to whether a road is or is not a highway repairable by the public, or an inquiry as to any other important matter of fact, the Court may either themselves decide such question, or may impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions, and submit to

such jury such questions in relation to the matters of fact in liability dispute as the Court think fit ; and the verdict of such jury, to repair. after hearing the evidence adduced, shall be conclusive as to the questions submitted to them.

The questions so submitted shall be in the form, and shall be tried as nearly as may be in the manner, in which feigned issues are ordinarily tried ; and the Court shall decide the parties to be plaintiffs and defendants in such trials. Issue as a feigned issue.

Subject as aforesaid, the Court may, upon the hearing of Judgment. any appeal under the Act, confirm, reverse, or modify any order of the highway board, or rectify any account appealed against (sec. 42, Act 1864).

Where places are situate in different counties, and united in one highway district, in matters relating to appeals to quarter sessions against *accounts*, they will be subject to the jurisdiction of the county in which the district is situate to which such places shall have been united by any provisional and final order or orders, or to which after the passing of the Act (1864) any such district shall be declared to be subject by the orders constituting the same, in the same manner as if all such places were situate in such county. This section is limited to appeals against *accounts* (sec. 44, Act 1864). Appeals against accounts where places in different counties.

If any person should think himself aggrieved (*a*) by any rate made under or in pursuance of this Act (1835) (all the Acts are to be now read as *one* Act), or by any order, conviction, judgment, or determination made, or by any matter or thing done, by any justice or other person in pursuance of the Act, and for which no particular remedy for relief had been appointed, such person may appeal to the next (*b*) general or quarter sessions of the peace to be held for the county, &c., wherein the cause of such complaint shall arise, such appellant first giving to the surveyor or surveyors, or to such justice or other person by whose act such person shall think himself aggrieved, notice in writing of his intention to bring such appeal, together with a statement of the grounds of such appeal, within fourteen days after such rate shall be made, or cause of complaint shall have arisen ; and within four days after such notice entering into a recognizance before a justice, with two sufficient sureties, to try such General power of appeal. Act 1835, s. 105.

(*a*) The party appealing must show some special and peculiar injury ; and the notice must state he is injured and aggrieved : see the cases cited under tit. "Appeal," *ante*, p. 113. An ap-

peal may be made against the appointment of a surveyor : *R. v. St. Albans*, 3 B. & C. 698.

(*b*) "Next practicable" sessions : see Sum. Juris. Act, 1879, s. 23.

appeal, and abide the order of and pay such costs as may be awarded by the justices, and such justices shall finally determine the matter of such appeal; and shall, according to their discretion, award costs. Power is given to the Court to respite the appeal. The appellant will not be heard on his appeal unless such notice and statement shall have been given, nor be allowed to go into any evidence on any other grounds of appeal than those set forth in such statement.

Jurisdiction of justices.

By Act 1862, sec. 38, "No justice of the peace shall act as such in any matter in which he has already acted as a member of the highway board, and in which the decision of such board is appealed against." But by Act 1864, sec. 46, no justice shall be disabled from acting as such merely on the ground that *he is by virtue of his office* a member of any highway board complaining, interested, or concerned in such matter, *or has acted (a)* as such at any meeting of such board (see also sec. 17, Act 1864; and see *ante*, Title, "Members of the Court.")

Procedure on appeal against a rate. Sec. 106, Act 1835, incorporates 41 Geo. 3.

By sec. 106 in all cases of appeal against the highway rate or assessment made in pursuance of the Act 1835, the several provisions in 41 Geo. 3, c. 23, an Act for the better collection of the poor-rate, will be applicable thereto as if the same had been, with respect to such appeals, repeated and re-enacted.

In Mr. Prentice's edition of Pratt on Highways is the following summary of those provisions:—

Under *section 1*. On appeal the sessions may amend the rate without quashing it, or may quash the rate; but the sum assessed may, notwithstanding, be levied and taken as payment on account of the next effective rate.

Section 2. Notice of appeal is not to prevent a distress being made for the recovery of the rate, provided the sum assessed be not greater than that assessed in the last effective rate.

Section 3. The quarter sessions having ordered the rate to be quashed, may order the sum charged on any person not to be paid, and may stop proceedings for the recovery thereof.

Section 4. Notice of appeal is to be given to the churchwardens and overseers of the poor.

Section 5. Appeals may be decided, if the parties consent, although no notice be given.

(a) A court was held improperly constituted where one of the justices present had appeared by counsel to oppose the order,

and was a member of the Highway Board: *R. v. Cumberland J.J.*, 42 J. P. 351.

Section 6. Persons appealing against the rate shall give notice not only to the churchwardens, &c., but also to the persons interested, &c.

Section 7. The rate shall be recoverable as allowed by the quarter sessions.

Section 8. If on appeal the name of any person be struck out, or any sum lowered, and it appear that money has been improperly paid, the quarter sessions may order the money to be repaid.

By sec. 107 rates are not to be quashed for want of form, or removed by *certiorari*. Under sec. 108 the court may grant a special case.

Where any person or corporation is liable by reason of any tenure of lands or otherwise to repair any highway situate in a highway district, such person or corporation (or the highway board, see sec. 24, Act 1864), may apply to any justice of the peace for the purpose of making such highway, a highway to be repaired and maintained by the parish in which the same is situate; and such justice shall thereupon issue summonses requiring the waywarden of such parish, the district surveyor, and the party so liable to repair such highway, to appear before two or more justices in petty sessions assembled; and the justices at such petty sessions shall proceed to examine and determine the matter; and shall, if they think fit, make an order under their hands that such highway shall thereafter be a highway to be repaired and maintained by the parish; and shall in such order fix a certain sum to be paid by such person or corporation to the highway board of the district in full discharge of all claims thereafter in respect of the repair and maintenance of such highway; Act 1862, s. 35.

And any person aggrieved by any order of justices made in pursuance of this section may appeal to a court of general or quarter sessions holden within four months from the date of such order; but no such appeal shall be entertained unless the appellant has given to the other party to the case a notice in writing of such appeal, and of the matter thereof, within fourteen days after such order, and seven days at the least before such sessions, and has entered into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned to appear at the sessions and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as may be by the court awarded. And upon such notice being given, and such recognizance being entered into, the court at such sessions shall hear and determine the matter of the appeal, and shall make such order thereon,

Rate not to be quashed for want of form.

Certiorari taken away.

Highways repairable *ratione tenure* may be made repairable by the district.

Appeal on sec. 35, Act 1862.

with or without costs to either party, as to the court may seem meet.

Result of order. From and after the making of such order by the justices, or by the court on appeal, as the case may require, such highway shall be repaired in like manner and at the like expense as highways which a parish is liable to repair; Act 1862, sec. 35.

Cost of appeal. If the appellant is successful the costs shall, unless the court otherwise orders, be paid by the board, and shall be charged to the parishes within the jurisdiction of the board, other than the parish to which the appellant belongs, in the same proportions in which such parishes contribute to the common fund of the board.

If the appellant is *unsuccessful* the board, if the *waywarden* be the appellant, may charge the costs of the appeal to the parish in which the appellant waywarden belongs in the same manner as if they were expenses incurred in repairing the roads in such parish, and may levy the sum accordingly, and may carry the sum so levied to the account of the several parishes within the jurisdiction of the board, other than the parish to which the appellant waywarden belongs, in the same manner as if they were expenses contributed by such parishes to the common fund of the board; but if some *ratepayer*, other than the waywarden, is the appellant, the court may order the costs of the appeal to be paid by such appellant; and such costs shall be recoverable in the same manner as a penalty is recoverable under the Highway Act, 1862 (sec. 47); Act 1864, sec. 43.

Highway board may borrow money. Under sec. 47, Act 1864, the highway board is empowered, with the approval of the justices in general or quarter sessions, to borrow money for the purpose of making improvements in the highways within their jurisdiction.

Previously to applying for the approval of the sessions an estimate of the expense must be made, and two months' notice is to be given of the intention to make such application; (1) by transmitting a copy of the notice to the clerk of the peace for the county or division; (2) by placing a copy of each notice for three successive Sundays on the church doors of *every church* (a) of the parish or parishes on behalf of which such works are to be done; or, in case of any place not having a church, in some conspicuous position in such place. See 45 & 46 Vict. c. 20; *R. v. Dyott*, 51 L. J. M. C. 104 (a).

(a) This refers to the Established Church: *Ormerod v. Chadwick*, 16 M. & W. 367; *Ex parte Warblington*, 18 Jur. 494.

Upon the hearing the application *any* person or persons may oppose the approval of the justices being given, and the justices may give or withhold their approval, with or without modification, as they think just ; Act 1864, s. 47. Any person may oppose.

All monies so borrowed will be a first charge on the district fund ; Act 1878, s. 8, amending Act 1864, s. 47, which made the charge on the highway rate. Monies charged on district fund.

The improvements of highways are defined to be :— Improvements.

1. The conversion of a road that has not been stoned into a stoned road.

2. The widening a road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the making any new road, the building or enlarging bridges.

3. The doing of any work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair.

By 35 & 36 Vict. c. 85, s. 15, the abolition of turnpike tolls is deemed to be an “improvement” within the above section, and each parish will contribute towards the money borrowed for such purpose in the same proportion as it contributes to the district fund. Abolition of turnpike tolls an improvement.

Section 13. The Highways and Locomotives Amendment Act, 1878, enacts that where between December 31, 1870, and the date of the Act (16th August, 1878) any turnpike road ceased to be a turnpike road, and any road which, being at the time of the passing of the Act a turnpike road, shall be deemed to be a main road ; and one half of the expenses incurred from the 29th September, 1878, by the highway authority in the maintenance of such road shall, as to every part thereof which is within the limits of any highway area, be paid to the highway authority of such area by the county authority of the county in which such road is situate, out of the county rate, &c. See *ante*, p. 293. Turnpike roads becoming main roads.

The “road” here meant is any portion of a road as well as the whole road ; and, therefore, if any such portion ceases to be a turnpike road, it shall be deemed to be a main road. The statute does not say if a road ceases to be subject to a turnpike trust it is to be a main road. The expression “cease” in the enactment does not mean the expiration of the trust. So that where a portion of a turnpike road is within the area of a borough, and is repaired by the borough authority, and the power to take tolls in respect of it is gone, such portion ceases to be a turnpike road, and becomes a main road, and sec. 13 comes into operation ; *Rochdale* Need not be the whole road as a main road.

Part within a borough.

Corporation v. Lancashire JJ., 8 Q. B. D. 12; 50 L. J. M. C. 97.

Drift ways becoming highways.

Where the inhabitants of any parish (see sec. 144 Public Health Act, 1875) are desirous of undertaking the repair of any driftway (a way for the public on foot or horse) or any private carriage or occupation road within their parish, at the request of the vestry (now the local authority, sec. 144, Public Health Act, 1875), and the consent in writing of the owner and occupier of every part thereof, the district surveyor may apply to the justices in petty sessions to declare such driftway to be a public highway, to be repaired at the expense of the parish, and the justices may make their declaration accordingly; Act 1862, sec. 36. [Co. Litt. 56 a.]

Discontinuance of unnecessary highways.

Under the Highway Act, 1878, sec. 24, where any "authority" liable to keep any highway in repair is of opinion that so much of the highway as lies within any parish situate in a petty sessional division is unnecessary for public use, and therefore ought not to be maintained at the public expense, such authority (referred to as "the applicant authority") may apply to a court of *summary jurisdiction* of such division to view by two or more justices, being members of the Court, the highway to which such application relates, and on such view being had, if the court of summary jurisdiction is of opinion that the application ought to be proceeded with, it shall by notice in writing to the owners or reputed owners and occupiers of all lands abutting upon such highway, and by public notice, appoint a time and place, not earlier than one month from the date of such notice, at which it will be prepared to hear all persons objecting to such highway being declared unnecessary for public use, and not repairable at the expense of the public.

Notice of holding court to hear objections.

Persons may object to order before the Court of Summary Jurisdiction.

On the day and at the place appointed all persons objecting to such an order being made will be heard by the Court, and the Court will make the order either dismissing the application, or declaring that such highway is unnecessary for public use, and that it ought not to be repaired at the public expense; and upon the making such order the repairing such highway will cease to be defrayed out of the public rate.

The notice, how given.

The public notice of the time and place appointed for hearing a case under this section must be given by the applicant authority as follows:—

(1). By advertising a notice of the time and place appointed for the hearing, and the object thereof, with a

description of the highway to which it refers in some local newspaper circulating in the district in which such highway is situate once at least in each of the four weeks preceding the hearing ; and

(2). By causing a copy of such notice to be affixed, at least fourteen days before the hearing, to the principal doors of every church and chapel in the parish in which such highway is situate, *or* in some conspicuous position near such highway. And the application will not be entertained by the Court until the fact of such public notice having been given is proved to its satisfaction.

After the order has been made, any person interested in the maintenance of the highway, after one month's notice in writing to the applicant authority, if it appears to the court of quarter sessions that from any change of circumstances since the time of the making the order such highway has become of public use, and ought to be repaired at the public expense, the court of quarter sessions may direct that the liability of such highway to be maintained at the public expense shall revive, and from thence the highway will be repairable by the applicant authority ; and the Court may order the costs and expenses of and incident to such application to be paid as they may see fit : Act 1878, sec. 24.

Any order of a court of summary jurisdiction under this section will be deemed to be an order from which an appeal lies to a court of quarter sessions : Act 1878, sec. 24. This enactment will clear up all doubts as to the *right* of appeal, and was probably inserted in consequence of the doubts expressed by Hannen, J., in *R. v. Surrey JJ.*, 39 L. J. M. C. 49 ; L. R. 5 Q. B. 87, on the effect of the enactment in Act 1864, sec. 21, that upon the justices, on the request of the highway board, considering any highway unnecessary, "*the like proceedings* shall be had as where application is made under the Highway Act, 1835, to procure the stopping-up, &c., a highway."

If any party thinks himself aggrieved by any conviction or order made by any court of summary jurisdiction on determining any information or complaint under this Act, the party so aggrieved may appeal (see also sec. 32, Sum. Juris. Act, 1879, *post*) therefrom subject to the conditions and regulations following :—

1. The appeal shall be made to the next practicable court of quarter sessions for the county or place where the decision appealed from was given, holden not less than twenty-one

On change of circumstances liability to repair the road may be restored.

Appeal to the quarter sessions.

Appeal clause 37 under Act 1878.

days after the decision of the court from which the appeal is made; and

2. The appellant shall, within ten days after the pronouncing by the court of the decision appealed from, give notice to the other party, and to the court of summary jurisdiction (see *Curtis v. Buss*, *infra*, pp. 72, 133) of his intention to appeal and of the ground thereof; such notice of appeal shall be in writing, signed by the person or persons giving the same, or by his, her, or their solicitor on his, her, or their behalf; and,

3. The appellant shall, within three days after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties conditioned personally to try such appeal, and abide the judgment of the court thereon, and pay such costs as may be awarded, or give such other security as the justices may allow; and,

4. If in custody, the appellant may be discharged on his recognizance or the security given.

5. The court of appeal may adjourn the appeal; on the hearing they may confirm, reverse, or modify the decision of the court of summary jurisdiction; or remit the case to such court with their opinion thereon; or make such other order in the matter as the court thinks just; and if the matter be remitted, the court of summary jurisdiction shall rehear and decide the information or complaint in accordance with the opinion of the court of appeal. The court of appeal may make any order as to costs as it thinks just.

Dedication
of a high-
way.

Prior to the 20th March, 1836, the time at which the Act 1835 came into operation, a highway could be fully dedicated to the public by the owner allowing the public to pass and repass for a series of years without let or hindrance, there existing an intention on the part of the owner to dedicate the highway, *animus dedicandi*, without any interruption, *Poole v. Huskinson*, 11 M. & W. 827; *Surrey Canal Co. v. Hall*, 1 Man. & Gr. 392; *R. v. Petrie*, 4 E. & B. 737; *R. v. East Mark*, 11 Q. B. 877. Permissive user, although the public were allowed to pass, was not sufficient, *Woodyer v. Haddon*, 5 Taunt. 125; *Barracough v. Johnson*, 8 A. & E. 99. The dedication should come from the owner of the fee; *Wood v. Veale*, 5 B. & Ald. 454; *R. v. Lloyd*, 1 Camp. 260; *Jarvis v. Dean*, 3 Bing. 447; *Baxter v. Taylor*, 1 Ner. & M. 13; *R. v. Barr*, 4 Camp. 16. The question of dedication is one for the jury: *R. v. Horley*, 8 L. T. 382; 27 J. P. 101.

Where a road is made or recognised (*a*) as public by Act of Parliament, it is not necessary to further dedicate it, or that it should be adopted by the parish: *R. v. Lyon*, 5 D. & R. 497; *R. v. Lordsmere*, 19 L. J. M. C. 221, in which case Lord Campbell did not agree with, *R. v. Mellor*, 1 B. & Ad. 32, as to statute duty. A highway cannot be created by statute unless the provisions creating it are strictly followed: *Cubit v. Maxse*, L. R. 8 C. P. 704; 42 L. J. C. P. 278; 29 L. T. 244; 24 W. R. 789.

As to a partial dedication, see *Roberts v. Karr* and *Lethbridge v. Winter*, 1 Camp. 261, n.; *Stafford v. Coyney*, 7 B. & C. 257; *Hildred v. Adamson*, 25 J. P. 645; *R. v. Leake*, 5 B. & Ad. 469; *R. v. Surrey JJ.*, 3 L. T. 308. Dedication might be subject to a pre-existing right, or an interruption for a beneficial purpose, and for a limited time; see *Elwood v. Bullock*, 6 Q. B. 383; *Morant v. Chamberlain*, 6 H. & N. 544; 30 L. J. Ex. 299; so the ploughing up a church foot-path may be lawful: *Mercer v. Woodgate*, 39 L. J. M. C. 21; *Arnold v. Blaker*, 40 L. J. Q. B. 185. [See *Newington Vestry v. Jacobs*, 41 L. J. M. C. 72.]

Since the Act 1835 (20th March, 1836), to dedicate a highway so as to render the parish bound to maintain and repair it, proceedings must be taken under sec. 23 of that Act: *R. v. Dunkinfield*, 32 L. J. M. C. 235; 4 B. & S. 158; and see *Fawcett v. The York & N. M. Ry. Co.*, 16 Q. B. 614. Unless the highway be made public by statute (*supra*).

By sec. 23, Act 1835, no road or occupation way made by and at the expense of any individual or private person, body politic or corporate, nor any road already set out or to be hereafter set out as a private driftway, pathway or horsepath in any award under an Enclosure Act, shall be *deemed* (*b*) or *taken to be* a highway which the inhabitants of any parish shall be compellable or liable to repair, unless the person, body politic or corporate, proposing to dedicate such highway to the use of the public, shall give three months' previous notice in writing to the surveyor of the parish (now the Local Authority under the Public Health Act, 1875, sec. 144; and see Highway Act, 1878, secs. 4, 5), of his intention to

(*a*) A highway may be extinguished by implication under a statute: see *Yarmouth Corporation v. Simmons*, 10 Ch. D. 518; 47 L. J. Ch. 792, Fry, J.

(*b*) "The words are not that the road shall be no highway, but that it shall not be '*deemed*' to be a highway," per Wightman:

Roberts v. Hunt, 15 Q. B. 17; see *Rugby Charity v. Merryweather*, 11 East, 376; *Woodyer v. Hadden*, 5 Taunt. 125. See *infra*, tit. "Commons Inclosure Act;" and see *Greenwich Board of Works v. Maudslayi*, L. R. 5 Q. B. 397; 39 L. J. Q. B. 205.

dedicate such highway to the use of the public, describing its situation and extent, and shall have made, or shall make, the same in a substantial manner, and of the width required by the Act (see sec. 80; every cart-way leading to any market-town, twenty feet wide, and every horse-way, eight feet wide), and to the satisfaction of the said surveyor (the local authority), and of any two justices of the peace of the division in which such highway is situate in petty sessions assembled, who are required, on receiving notice from such person or body politic or corporate to view the same, and to certify that such highway has been made in a substantial manner, and of the width required by the Act, at the expense of the party requiring such view, which certificate shall be enrolled at the quarter sessions (*a*) holden next after the granting thereof; in such case, after the highway shall have been used by the public, and duly repaired and kept in repair by such person or body politic or corporate for the space of twelve months, such highway shall for ever be repairable by the parish in which it is situate.

Vestry was
to be called
—not so
now; local
authority
to act.

On the receipt of the notice by the local authority acting as the surveyors of the parish (P. H. A. 1875, s. 144), and such authority, acting as the inhabitants in vestry (*ib.*), should deem the highway not to be of sufficient utility to the inhabitants of the parish to justify its being kept in repair at the expense of the parish, a justice of the peace, on the application of the surveyor, shall summon the party proposing to dedicate the highway to appear before the next special sessions for the highways to be held for the division in which the highway is situate, and the question as to utility of such highway will then be determined at the discretion of the justices.

Conditions
precedent.

The requirements of the statute are conditions precedent, and cannot be dispensed with or waived (*b*).

Under the Public Health Act, 1848, ss. 69 and 70, where a *street* within an urban authority had been sewered, levelled, paved, flagged, metalled, channelled, and made good, and provided with the proper means of lighting to the satisfaction of the urban authority, the authority might proceed to declare it a highway, repairable by the inhabitants at large. This was not matter for appeal. But those

(*a*) The sessions for the "limit." The non-enrolment of the order will not vitiate it. *De Ponthieu v. Pennyfeather*, 5 Taunt. 634.

(*b*) See *R. v. Norfolk JJ.*, 44

L. J. M. C. 45; 31 L. T. 585; 23 W. R. 165; *Hirst v. Halifax Local Board*, L. R. 6 Q. B. 181; 40 L. J. M. C. 43.

requirements might well be called for before a local authority took into consideration the dedication of a highway under sec. 23, Act 1835. See *R. v. Dunkinfield*, 4 B. & S. 158; 32 L. J. M. C. 230.

The appeal under sec. 105, Act 1835, is given to any person thinking himself aggrieved by any rate made under the Act, or by any order, conviction, judgment or determination made, or by any matter or thing done, by any justice or other person in pursuance of the Act, and for which no particular method of relief was appointed; and such appeal is to be made to the justices at the next quarter sessions of the peace, held for the county, &c., wherein the cause of such complaint should arise; such appellant first giving notice to the surveyors, (now the local authority (*a*),) or to the justice or other person by whose act the appellant might think himself aggrieved, notice in writing of his intention to bring such appeal, together with a statement of the grounds of such appeal, within fourteen days after such rate shall have been made, or cause of complaint had arisen; and within four days after such notice entering into his recognizance with two sureties to try the appeal, abide the order of the Court, and pay such costs as might be awarded. Power is given to the Court to award costs; and the decision is to be final. The appellant cannot be heard without such notice; nor will he be allowed to give evidence on any grounds other than those of which notice had been given (*b*).

Where a person is aggrieved by any determination of the justices as to the utility of the highway under sec. 23 (*supra*, p. 305) an appeal may be made to the next general or quarter sessions under sec. 105 (*supra*): *R. v. Derbyshire JJ.*, 1 Ell. B. & Ell. 59; 27 L. J. M. C. 189.

By 5 & 6 Will. 4, c. 50, s. 82, it is enacted that, "where it shall appear upon the view of two justices of the peace that any highway is not of sufficient breadth, and might be widened and enlarged, such justices are empowered within their respective divisions to order such highway to be widened and enlarged in such manner as they shall think fit, so that the

Widening
highways.

(*a*) Public Health Act, 1875, s. 144.

(*b*) When a party is convicted under this section the person by whose act he is aggrieved is the justice, or Court of Summary Jurisdiction, and notice may be

given as under the Sum. Juris. Act, 1879, ss. 31, 32. (See that Act, *post*.) But on appealing against a rate the surveyors, or Local Authority, are the parties causing the grievance: see *R. v. Bedfordshire*, 11 A. & E. 134.

highway, when widened and enlarged, shall not exceed thirty feet in breadth ; but neither of the powers will extend to the pulling down any house or building (*a*), or to take away the ground of any garden, lawn, yard, court, park, paddock, planted walk, plantation or avenue to any house, or any inclosed ground set apart for building ground or as a nursery for trees ; and for the satisfaction of the person, body politic or corporate seised or possessed of, or interested in their own right or in trust for any other person, in the ground that shall be laid into the highway respectively so to be widened and enlarged, the surveyor, under the direction, and with the approbation of the said justices in writing, shall and is hereby empowered to make an agreement with him for the recompense to be made for such ground, and for the making such new ditches and fences as shall be necessary, according and in proportion to their several and respective interests therein, and also with any other person, body politic or corporate, that may be injured by the widening and enlarging such highway, for the satisfaction to be made to him respectively as aforesaid ; and if the surveyor, under the direction and with the approbation of the justices, cannot agree with such person, body politic or corporate, or if he cannot be found, or shall refuse to treat or take such recompense or satisfaction as shall be offered to them respectively by such surveyor, then the justices of the peace, at any general quarter sessions to be holden for the *limit* (*b*) wherein such ground shall lie, upon certificate in writing signed by the justices making such view as aforesaid of their proceedings in the premises, and upon proof of fourteen days' notice (*c*) in writing having been given by the surveyor of such parish to the owner, occupier, or other person, body politic or corporate interested in such ground, or to his guardian, trustee, clerk or agent, signifying an intention to apply to such quarter sessions for the purpose of taking such ground, shall impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at

(*a*) *R. v. The Newmarket Ry. Co.*, 15 Q. B. 702 ; 4 New S. C. 241 ; 19 L. J. M. C. 241. The order of the court must be definite, without any discretion to be exercised by the surveyor in the carrying out the order. A highway board may widen a road : Act 1861, ss. 47, 48.

(*b*) As to the meaning of

"limit" see *ante*, p. 286 *et seq.*

(*c*) These conditions should appear on the inquisition to show jurisdiction : *R. v. Bagshaw*, 7 T. R. 363 ; *R. v. Norwich and Walton Road*, 5 A. & E. 363 ; the person who should give the notice cannot take advantage of the defect : *R. v. Swansea Harbour*, 8 A. & E. 439.

such quarter sessions, and the said jury shall, upon their oaths, to the best of their judgment, assess the damages to be given and recompense to be made to the owners and others interested as aforesaid in the said ground for their respective interests (a) as they shall think reasonable, not exceeding forty years' purchase, for the clear yearly value of the ground so laid out, and likewise such recompense as they shall think reasonable for the making of new ditches and fences on the side of the said highway that shall be so widened and enlarged, and also satisfaction to any person, body politic or corporate, that may be otherwise injured by the widening and enlarging the said highways respectively, and upon payment or tender of the money so to be awarded and assessed to the person, body politic or corporate entitled to receive the same, or leaving it in the hands of the clerk of the peace of such *limit* (b), in case such person, body politic or corporate cannot be found or shall refuse to accept the same, for the use of the owner of or others interested in the said ground, the interest of the said person, body politic or corporate in the said ground shall be for ever divested out of them; and the said ground, after such agreement or verdict as aforesaid, shall be esteemed and taken to be a public highway to all intents and purposes whatsoever, saving nevertheless to the owner of such ground all mines, mineral and fossils lying under the same which can or may be got without breaking the surface of the said highway, and also all timber and wood growing upon such ground to be felled and taken by such owner within one month after such order shall have been made, or in default thereof to be felled by the said surveyor within the respective months aforesaid (see sec. 66), and laid upon the land adjoining for the benefit of the said owner; and where there shall not appear sufficient money in the hands of the surveyor for the purpose aforesaid, then the said two justices in cases of agreement, or the said court of quarter sessions after such verdict as aforesaid, shall direct the surveyor to make, collect, and levy an equal rate in the same manner as the rate by this Act authorized to be made, and to pay the money to the person, body politic or corporate so interested in such manner as the said justices or court of quarter sessions respectively shall direct and appoint; and the money thereby raised shall be employed and accounted for according to the

(a) See note (b) *supra*, *R. v. Bayshaw*, and *R. v. Norwich and Walton Road*.

(b) As to the meaning of "limit," see *ante*, p. 286 *et seq.*

order and direction of the said justices or court of quarter sessions respectively for and towards the purchasing the land to widen and enlarge the said highway, and for making the said ditches and fences, and also satisfaction for the damages sustained thereby: provided that no such rate to be made in any one year shall exceed one-third part of the rate by this Act authorized to be levied in addition to the rate for the repair of the highways" (a).

Costs on
assessment
of value of
land taken.

If the jury give more recompense or damage than the sum offered, then the costs and expenses attending the proceedings will be borne and paid by the surveyor out of the monies in his hands, or to be assessed and levied by virtue and under the powers of the Act. But if no more or less than was offered, then, by the person, body politic or corporate who shall have refused to accept the recompense, and satisfaction so offered to him: Act 1835, s. 83.

As to the widening of highways under local and personal Acts, see 25 & 26 Vict. c. 61, s. 44, to which the provisions of the Act 1835 are applicable.

Discon-
tinuing or
diverting,
&c., a
highway
under the
Inclosure
Acts.
Appeal.

As to the discontinuing, diverting, stopping up, or altering a public road by a valuer, under the Inclosure Acts, see 8 & 9 Vict. c. 118, s. 62; and as to the appeal to the quarter sessions, see secs. 63, 64. Under sec. 63 the appeal may be made at any time within four months after the *first* Sunday on which the notice (b) to discontinue the highway shall have been posted on the church door (a. p. 302, n.); and notice (b) of the appeal must be given to the valuer, together with a statement in writing of the ground of the appeal; otherwise the appellant will not be heard; nor will he be allowed to go into evidence on other grounds than those stated in his notice. By sec. 64 the appeal will be heard by a jury to try whether the road be necessary or not, and the court will make the order in compliance with the verdict. The costs to follow the event; and the section directs out of what funds the costs shall come on the part of the valuer and inhabitants.

Costs.

Diverting,
stopping
up, and
turning
highways.
The vestry

The power of stopping roads was unknown to the common law; it is, therefore, required to be exercised in strict conformity with the statute creating it. See *R. v. Milverton*, 3 A. & E. 841, 854.

By sec. 84 of the Act 1835, it is enacted that when the

(a) The above sec. 82 is framed on sec. 16 of 13 Geo. 3, c. 78, the former Highway Act, *ante*, p. 288.

(b) As to the general provisions regulating the notices, see sec. 162 of 8 & 9 Vict. c. 118.

inhabitants in vestry assembled (now the local authority under sec. 144, Public Health Act, 1875) shall deem it expedient that any highway should be stopped up, diverted, or turned, either entirely, or reserving a bridle-way or foot-way along the whole or any part or parts thereof, the chairman of such meeting (of the local authority) shall, by an order in writing, direct the surveyor to apply to two justices to view the same, and shall authorise him to pay all the expenses attending such view, and the stopping up, diverting, or turning such highway, either entirely, or subject to such reservation as aforesaid, out of the moneys received by him for the purposes of the Act:—

Provided, nevertheless, that if any *other* party shall be desirous of stopping up, diverting, or turning any highway as aforesaid, he shall, by a notice in writing, require the surveyor to give notice [to the churchwardens to assemble the inhabitants in vestry, and to submit to them the wish of such person, and if such inhabitants (*a*)] shall agree to the proposal, the said surveyor (the local authority) shall apply to the justices as last aforesaid for the purposes aforesaid; and in such case the expenses aforesaid shall be paid to such surveyor by the said party, or be recoverable in the same manner as any forfeiture is recoverable under the Act; and the surveyor is hereby required to make such application as aforesaid.

Under the Public Health Act, 1875, s. 144, every urban authority (that is, the town council in a borough; the improvement commissioners in an Improvement Act or local government district, not being part of a borough; or a local board, having no part of the district within a borough, and not being coincident in area with a borough or Improvement Act district), shall, within their district, exclusively of every other person, be surveyors of highways, and have, exercise, and be subject to all the powers, duties, and liabilities of surveyors of highways. And every urban authority shall also have, exercise, and be subject to the powers, authorities, duties, and liabilities which by the Highway Act, 1835, or any Act amending the same, *are vested in or given to the inhabitants* in vestry assembled of any parish within their district.

All ministerial acts required by any Act of Parliament to Ministerial

(*a*) This part of the section within brackets is rendered practically inoperative by the Public Health Act, 1875, s. 144.

The notice will be given to the local authority as the surveyors, and that authority will also act as the vestry (*ib. sup.*)

acts to be done by surveyor.

Urban authority in position of the vestry.

be done by or to the surveyor of highways may be done by or to the surveyor of the urban authority or by or to such other person as *they* may appoint.

This section placing the urban authority in the same position as the inhabitants assembled in vestry, materially alters the preliminary proceedings required under sec. 84 of Act 1835, above set out. And there is a still further material alteration to be observed, that the "authority" is not only to act as the vestry, but is also exclusively the surveyor of the highways in the district. The result is, that the calling a meeting of the vestry within the jurisdiction of the urban authority is not now needed. And everything which would or could be done by the vestry or the surveyor will now be performed by the urban authority, and the proceedings be much simplified. In the first instance the urban authority may deem it expedient that a highway may be stopped up, &c.; or secondly, some "other party" may desire to stop up, &c., a highway, and then his notice in writing will be addressed to the urban authority, as the surveyors of the district, and will then be submitted to that authority acting as the vestry, and the requirements of the 85th section will then be proceeded with as directed.

Preliminary proceedings must be strictly followed.

The certificate of the justices.

These preliminary proceedings, as required by sec. 84, must be strictly followed; upon any failure, they may be challenged on appeal (*a*); but inasmuch as they do not come before the justices in the subsequent proceedings under sec. 85 when they make their "view," and no machinery is provided for the justices on granting their certificate to inquire whether such preliminaries have in fact happened, they need not be set out in the justices' certificate. It was for some time considered (see Coleridge, J., judgment in *R. v. Worcestershire JJ.*, 3 E. & B. 477; 23 L. J. M. C. 113) that it was requisite to set out in the certificate all the preliminary matter to show the jurisdiction of justices to act; but it was explained by Blackburn, J., in *R. v. Hervey*, 44 L. J. M. C. 1; L. R. 10 Q. B. 46 (*b*), that the decision in *R. v. Worcestershire*, and upon which reliance had been made, was a mere dictum

(*a*) See *Davison v. Gill*, 1 East 64; *R. v. Surrey JJ.*, 5 L. R. Q. B. 87; 39 L. J. M. C. 49; see also *R. v. Surrey JJ.*, L. R. 5 Q. B. 456; 39 L. J. M. C. 145, in which the proceedings were quashed on certiorari for want of compliance with the forms as to

notices under the Act. See also *Wright v. Frant*, 32 L. J. M. C. 204; *R. v. Milcorton*, 5 A. & E. p. 854; *R. v. Shppard*, 3 B. & A. 414. *R. v. Surrey*, post, p. 315.

(*b*) *S. C. Hervey v. The Bethnal Green Vestry*, 39 J. P. 272.

of Coleridge, J., and not binding on the court, as not being necessary for the determination of the case. The only point in the case was that the certificate must set out *ex facie* all that was necessary to give the justices jurisdiction in the matter; and every essential fact should appear on the certificate (Lord Denman in *R. v. St. Cuthbert Wells*, 5 B. & Ald. 939. Burns, J. of the Peace, Tit. Poor, 457). The justices derive their jurisdiction from the application made by the authority, acting as the surveyor, *requiring them to view* the highway to be stopped up; no previous proceedings need appear on the certificate.

R. v. Hervey was a case under the Metropolitan Acts constituting the select vestries and district boards as superseding the existing vestries, 18 & 19 Vict. c. 120, s. 8; 19 & 20 Vict. c. 112, s. 3, and creating them the surveyors of the highways, 18 & 19 Vict. c. 120, s. 96; and which provision has, by the Public Health Act, 1875, s. 144, been extended to urban districts.

The justices, having been required to view the highway proposed to be stopped up, &c., as directed by sec. 84, then by sec. 85, the following procedure will be followed:—

The view of the justices and subsequent procedure to stop up a highway, under s. 85.

1. When it shall appear *upon such view* of such two justices of the peace made at the request of the surveyor as aforesaid, that any public highway may be diverted and turned (*a*), either entirely or subject as aforesaid (sec. 84), so as to make the same nearer or more commodious to the public, and the owner (*b*) of the lands or grounds through which such new highway so proposed to be made, shall consent thereto by writing under his hand;
2. Or if it shall appear on *such view* that any public highway is unnecessary;
3. The justices shall direct the surveyor (or urban authority) to affix a notice in the form or to the effect of schedule (No. 19) (*c*) to this Act, annexed in legible

(*a*) "Stopped up" is here omitted but not elsewhere in the section.

(*b*) "Owner" includes also the "occupier," as defined in sec. 5, Act 1835.

(*c*) No. 19 (5 & 6 Will. 4, c. 50, s. 85).

Form of Notice of Diverting, &c., Highway.

Notice is hereby given, that on the — day of — next application will be made to his Majesty's justices of the peace assembled at quarter sessions in and for the county of —, at —, for an order

characters, at the place and by the side of each end of the said highway from whence the same is proposed to be turned, diverted, or *stopped up*, either entirely or subject as aforesaid ;

4. And also to insert the same notice in one newspaper published or generally circulated *in the county* where the highway so proposed to be diverted and turned or stopped up, either entirely or subject as aforesaid (as the case may be), shall lie, for four successive weeks next after the said justices have viewed such public highway ;
5. And to affix a like notice on the door of the church (*a*) of every parish in which such highway so proposed to be diverted, turned or stopped up, either entirely or subject as aforesaid, or any part thereof, shall lie, on four successive Sundays next after the making such view ;
6. And the said several notices having been so published, and proof thereof having been given to the satisfaction of the said justices ;
7. And a plan having been delivered to them at the same time, particularly describing the old and the proposed new highway by metes, bounds and admeasurement thereof, which plan shall be verified by some competent surveyor ;
8. The said justices shall proceed to certify under their hands the fact of their having viewed the said high-

for (*if the order be for turning, diverting and stopping up, &c., here to state it, and describe the road ordered to be turned, diverted and stopped up ; if the order be for stopping up a useless road here to state it, and describe the road ordered to be stopped up*), and that the certificate of two justices having viewed the same, &c., with the plan of the old and proposed new highway, will be lodged with the clerk of the peace for the said county on the — day of — next.

A. B.,	} Surveyor [<i>or surveyors</i>] of
C. D., &c.	
	the parish of —.

The notice must state what part will become unnecessary, and should also state the termini: *R. v. Horner*, 2 B. & Ad. 150. And where three roads join and a separate order is made as to each, separate notices should be posted at the point of junction: *R. v. Surrey JJ.*, L. R. 5 Q. B. 466 ; 39 L. J. M. C. 145.

(*a*) Meaning the Established Church ; see a. p. 301 n. ; where there is no such church, the notice is to be put in some conspicuous place ; 45 & 46 Vic. c. 20, passed in consequence of *R. v. Dyott*, 51 L. J. M. C. 104.

way as aforesaid, and that the proposed new highway is nearer or more commodious to the public, and if nearer, the said certificate shall state the number of yards or feet it is nearer, or if more commodious, the reasons why it is so ; (See p. 317).

9. And if the highway is proposed to be stopped up as unnecessary, either entirely or subject as aforesaid, then the certificate shall state the reason why it is unnecessary ;
10. And the said certificate of the said justices, together with the proof and plan so laid before them as aforesaid, shall as soon as conveniently may be after the making of the said certificate be lodged with the clerk of the peace for the county in which the said highway is situated ;
11. And *shall (at the quarter sessions which shall be holden for the limit (see p. 286 et seq.) within which the highway so diverted and turned or stopped up, either entirely or subject as aforesaid, shall lie, next after the expiration of four weeks from the day of the said certificate of the said justices having been lodged with the clerk of the peace as aforesaid) be read by the said clerk of the peace in open court ; (See pp. 321, 322)*
12. And the said certificate, together with the proof and plan as aforesaid, as well as the consent in writing of the owner of the land through which the new highway is proposed to be made, shall be enrolled by the clerk of the peace amongst the records of the said court of quarter sessions :—
13. Provided always, that any person whatever shall be at liberty, at any time previous to the said quarter sessions, to inspect the said certificate and plan so as aforesaid lodged with the said clerk of the peace, and to have a copy thereof on payment to the clerk of the peace at the rate of sixpence per folio, and a reasonable compensation for the copy of the plan.

By sec. 86, where it is proposed to stop up or divert more than one highway, which highways shall be deemed to be so connected together as that they cannot be separately stopped up or diverted without interfering one with the other, it shall be lawful to include such different highways in one order or certificate.

Where more than one highway is proposed to be stopped up.

On appeal part of certificate may be confirmed where more than one highway diverted.

Amendment of the certificate.

Strictness as to form of certificate.

The view by JJ.

The road nearer or more commodious.

And it is provided by the 87th sec. that in the event of any *appeal* (see sec. 91) being brought against the whole or any part or parts of any order or certificate for diverting *more highways than one*, it shall be lawful for the court to decide upon the propriety of confirming the whole or any part or parts of such order or certificate, without prejudice to the remaining part or parts thereof.

There appears to be no power in the court to amend the certificate, unless there be an appeal. When there is *no* appeal, if it appear on the face of the certificate that the justices making it have acted within their jurisdiction, the court has no power to refuse the enrolment: see sec. 91, Act 1835 (see *post*, p. 320).

It is of essential importance that all the requirements of sec. 85 should be accurately adhered to.

The "*view*" of the justices must be on an *actual* joint inspection of the highway by the two justices, for this is the very foundation of their jurisdiction after receiving the request from the surveyors of the highways to make the view; *R. v. Downshire*, 4 A. & E. 698; *R. v. Worcestershire JJ.*, 8 B. & C. 254; 28 L. J. M. C. 113; *R. v. Kent*, 10 B. & C. 477. The "*view*" must also be made by them "*together*;" they must jointly act on such "*view*;" *R. v. Cambridgeshire JJ.*, 4 A. & E. 111. The statement on the certificate to the effect: "We, A., B., & C., justices, &c., assembled at, &c., having upon view found," has been held to sufficiently state that the justices had viewed the highway together, and at the time when the order was made; *R. v. Cambridgeshire JJ.*, 4 Ad. & E. 111; see also *R. v. Milverton*, 5 A. & E. 841. It is the better form to state, "we having together and at the same time viewed," &c. It must appear on the order that, in fact, the conclusion come to by the justices has been exclusively from their joint view; *R. v. Jones*, 5 Jur. 364; 12 Ad. & Ell. 684; not from inquiries made of other persons; *R. v. Wallace*, 4 Q. B. D. 641; 40 L. T. 518.

The finding that the diversion or turning the highway will be "*nearer or more commodious*" may be in the alternative, *secundum allegata et probata* in the certificate of the justices; *R. v. Phillips*, 1 L. R. 1 Q. B. 648; 35 L. J. M. C. 217; *overruling R. v. Shiles*, 1 Q. B. 919; 10 L. J. M. C. 157; in which it was erroneously held that the "*or*" should be read as "*and*." See also a similar point under the Public Health Acts, as held in *R. v. Phillips; Malton Board of Health v. Malton Manure Co.*, 4 Ex. D. 302; 40 L. T. 755; *Gaskell v. Bagley*, 30 L. T. 516 Q. B.; *Brown v. Russell*, 37 L. J. M. C.

65 ; *Draper v. Spearing*, 30 L. J. M. C. 225 ; see also *Wright v. Frant*, 32 L. J. M. C. 204.

A certificate stating that the old highway to be stopped up will be unnecessary when the proposed alterations are completed is good ; *R. v. Phillips*, L. R. 1 Q. B. 648 ; 35 L. J. M. C. 217. But it seems unnecessary to state the fact ; *R. v. Wallace*, 4 Q. B. D. 641.

In a case *R. v. Midgley*, 12 W. R. 954 ; 5 B. & H. 621, a judgment is reported that a certificate, stating that the new highway will be more commodious when the diversion is made, is bad as certifying to a future state of things ; but in *R. v. Wallace (supra)* it was held that it must not only appear on the certificate that the proposed substitution would be more commodious (where the new road is not nearer), but that the justices should so certify as the result of their view ; and that such statement was a necessary averment.

The length and breadth of the highways must be fully and accurately stated, and correspond with the plan by "metes, bounds, and admeasurements." The roads on the plan should be set out with distinctive colours, and the termini indicated by letters, as well as drawing the plan by "compass" and to scale. As to setting out the metes and bounds, see *R. v. Jones*, 12 Ad. & E. 684 ; *R. v. Kenyon*, 6 B. & C. 640 ; *R. v. Horner*, 2 B. & Ad. 150 ; *Davison v. Gill*, 1 East 64 ; *R. v. Casson*, 3 D. & Ry. 40.

The justices cannot delegate to the surveyor a discretion as to the line of the new highway, it must be "found" by them in their certificate ; *R. v. The Newmarket Ry. Co.*, 15 Q. B. 702 ; 19 L. J. M. C. 241.

(For form of the certificate see 35 L. J. M. C. 217 ; 44 *ib.*).

When any such certificate shall have been so given as aforesaid, any person who may think that he would be injured or aggrieved, if any such highway should be ordered to be diverted and turned or stopped up, either entirely or subject as aforesaid ; and such new highway set out and appropriated in lieu thereof as aforesaid, or if any unnecessary highway should be ordered to be stopped up, may make his complaint thereof by appeal to the *said* quarter sessions [that is, to the quarter sessions holden *for the limit* (sec. 85) within which the highway shall lie] upon giving to the surveyor [now the local authority, see sec. 144, Public Health Act, 1875] *fourteen* days (a) [see *R. v. Maule*, 41 L. J. M. C. 47 ; Baines' Act,

Road to be described.

Authority to justices not to be delegated.

Forms.

Appeal against the enrolling a certificate to stop up, &c., a highway.

(a) Some recent text books state the number of days to give the notice at ten days as in the Act 1835, and make the state-

sec. 1] notice in writing of such appeal, together with a statement of the grounds of such appeal; otherwise the appellant cannot be heard on his appeal. The appellant will be confined to his grounds of appeal as stated.

A jury to
be em-
pannelled.

“In case of such appeal, the justices at the *said* quarter sessions shall, for the purpose of determining whether the proposed new highway is nearer or more commodious (*a*) to the public, *or* whether the public highway so intended to be stopped up, either entirely or subject as aforesaid (see sec. 84), is unnecessary, *or* whether the said party appealing would be injured or aggrieved, impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions. And if, after hearing the evidence produced before them, the jury shall return a verdict that the proposed new highway is nearer *or* (*a*) more commodious to the public, or that the public highway so intended to be stopped up, either entirely or subject as aforesaid, is unnecessary, or that the party appealing would not be injured or aggrieved, then the *said* court of quarter sessions shall dismiss such appeal, and make the order herein mentioned for diverting and turning and stopping up such highway either entirely, or subject as aforesaid, *or* for diverting, turning, and stopping up of such old highway, and purchasing the ground and soil for such new highway, *or* (*a*) for stopping up such unnecessary highway, either entirely or subject as aforesaid. But if the jury shall return a verdict that the proposed new highway is not nearer *or* not more commodious to the public, or that the highway so intended to be stopped up, either entirely or subject as aforesaid, is not unnecessary, or that the party appealing would be injured or aggrieved, then the *said* court of quarter sessions shall allow such appeal, and shall not make such order as aforesaid;” sec. 89.

Issue.

Verdict.

Confirma-
tion in
part of cer-
tificate.

“In the event of any appeal being brought against the whole or any part or parts of any order or certificate for diverting more highways than one (sec. 86), it shall be lawful for the court to decide upon the propriety of confirming the whole or any part or parts of such order or certificate, without prejudice to the remaining part or parts thereof;” sec. 87.

Costs.

The court is authorised *and required* to award to the party

ment on the authority of *Swift v. Lancashire*, 22 W. R. 76 Q. B.; S. C. *R. v. Lancashire*, 27 L. J. M. C. 161, although that case was decided on another point.

(*a*) See *R. v. Phillips*, 35 L. J. M. C. 217, overruling *R. v. Shiles*, 1 Ad. & Ell. N. S. 919; 10 L. J. M. C. 157 (*supra*).

giving or receiving notice of appeal such costs and expenses as shall be incurred in prosecuting or resisting such appeal, whether the same shall be tried or not, to be paid by the surveyor or other party at whose instance the notice for diverting, &c., was given; and in case the surveyor or such other party do not appear, to award the costs of the appellant, to be paid by the surveyor or other party; to be recoverable like any other penalties under the Act; sec. 90.

Under sec. 90 it is imperative on the sessions to award costs to the successful party; *R. v. Yorkshire*, 31 L. J. M. C. 271, 2 B. & S. 811; and the appeal need not have been tried; see *Sellwood v. Mount*, 1 Q. B. 726; *R. v. Long*, *ib.* 740; *Ex parte Holloway*, 1 Dowl. 26.

If no such appeal be made, or being made, shall be dismissed as aforesaid, then the justices at the *said* quarter sessions shall make an order to divert and turn or to stop up such highway either entirely or subject as aforesaid, or to divert, turn, and stop up such old highway, and to purchase the ground and soil for such new highway, or to stop up such unnecessary highway either entirely or subject as aforesaid, by such ways and means, and subject to such exceptions and conditions in all respects as in this Act is mentioned in regard to highways to be widened, and the proceedings thereupon shall be binding and conclusive on all persons whomsoever (a); and the new highways so to be appropriated and set out shall be and for ever after continue a public highway to all intents and purposes whatsoever, but no old highway (except in the case of stopping up of such useless highway as herein is mentioned) shall be stopped until such new highway shall be completed, and put into good condition and repair, and so certified by two justices of the peace upon view thereof, which certificate shall be returned to the clerk of the peace, and by him enrolled amongst the records of the court of quarter sessions next after such order as aforesaid shall have been made pursuant to the directions hereinbefore contained; sec. 91.

Even should there be no appeal it will be the duty of the sessions to see that the certificate has been made within the jurisdiction of their "limit" and as apparent on the face of the certificate; *R. v. Worcestershire JJ.*, 3 E. & B. 477; 25 L.

If no appeal certificate to be enrolled.

Even if appeal sessions not to act without jurisdiction.

(a) Subject to the JJ. acting within jurisdiction: See *R. v. Surrey*, L. R. 5 Q. B. 466; 39 L. J. M. C. 145, where a *certiorari* was obtained to quash

three certificates after they had been confirmed on appeal, the prescriptive notices not having been complied with, to give jurisdiction.

J. M. C. 113 ; as explained by *R. v. Hervey*, 44 L. J. M. C. 1 (*ante*, p. 314.) But without an appeal the court has no power to enquire into the *merits* of the question for the enrolment of the certificate.

As to the party being aggrieved see Tit. "Appeal," *ante*, p. 109.

The jurisdiction of the quarter sessions under ss. 82, 85, and 88, discussed.

The definition and explanation to be attached to the term "limit," given *supra*, p. 286, and also as applied to the jurisdiction of the recorder as the sole judge in a court of quarter sessions for a city or borough (see *ante*, tit. "*The Recorder and his Court*"), will lead us, without much difficulty, to the application of the same term as it is used in secs. 82, 85 and 88 of the Act, 1835.

Act 1835, sec. 82.

The language in sec. 82 is clear and distinct. If the surveyor of the highways cannot agree on the compensation to be made for the taking of land from an owner for the widening a highway, "then the justices of the peace at any general quarter sessions to be holden *for the limit wherein such ground shall lie*" . . . "shall impanel a jury," &c., "to assess the recompense;" and upon payment of the money to the person entitled to receive the same, or leaving it in the hands of the clerk of the peace of *such limit*, the ground in question will become divested out of the owner.

It will be noticed that this section follows the words of sec. 16 of the Act 13 Geo. 3, set out *ante*, p. 288.

Where certificate to be read.

Sec. 85, Act 1835, using similar language, gives directions *where* the "certificate" of the justices for the stopping up, &c., a highway shall be *read*; and as plainly and clearly enacts that it *shall* be read "*at the quarter sessions to be held for the limit within which the highway so diverted, &c., shall lie.*"

Distinction between Acts of Geo. 3 and Will. 4.

The distinction between the old Highway Acts, 13 Geo. 3, c. 78, and 55 Geo. 3, c. 68, with the Act of 1835, is, that the "*order*" under the old Acts for the diverting, &c., the highway was absolute in the first instance, as made by the justices at special sessions, and there was then this regulation: Under the 13 Geo. 3, c. 78, the original *order* was not enrolled at the quarter sessions, but the certificate of the *completion* of the alterations to be made was enrolled; and afterwards, under 55 Geo. 3, c. 68, s. 2, the *order* of the justices in special sessions was directed to be returned to the clerk of the peace in open court, at the quarter sessions to be holden *for the limit* where the highway in question should lie, and be then and there lodged with him. It was under that provision that *R. v. Gloucestershire*, 7 A. & E. 689, was

decided, and not under the 85th sec., Act 1835. See *ante*, p. 9.

Without an appeal instituted under the old writ *ad quod damnum* such court confirmed the order (*a*), and the clerk of the peace for "*the limit*" enrolled it with the records of the "*said*" court.

The Act of 1835 took away the power of the justices in special sessions to make an *order* for diverting or stopping up, &c., a highway as they could do under the Acts of Geo. 3 (*supra*); and provided, by secs. 84, 85, Act 1835, in lieu thereof, that, the inhabitants in vestry being consulted in the matter, and taking the initiative with the surveyor of the highways acting under the direction of the vestry, and on the application of the surveyor to two justices, entitled to act within the jurisdiction in which the highway might lie, to view such highway, and such justices having made their view of the highway, and the notices, &c., having been published as required by the sec. 85, the justices should make their certificate that they had so viewed, and all conditions had been complied with as the section directed; and they certify (*not order*) that the road might be diverted, &c., and then the certificate should be *lodged* with the clerk of the peace for the county in which such highway was situate; and "be read by the *said* clerk of the peace in open court," following the words of sec. 2 of 55 Geo. 3, c. 68.

To the question *where* is the certificate to be read? the reply is to be made in the explicit words of the section; "*at the quarter sessions which shall be holden for the limit* within which the highway so diverted, &c., shall lie."

It is on this part of the sec. 85 that experienced practitioners at quarter sessions have raised the *recata questio* and expressed doubts as to the sessions at which to proceed to divert or stop up a highway lying wholly within a city or borough having a Recorder and Quarter Sessions. No such question has arisen under sec. 82.

Doubts expressed on sec. 85, Act 1835, where highway in a borough with a court of quarter sessions.

(*a*) If the order had not been made at special sessions the court of sessions was bound to refuse the confirmation of it, although there was no appeal, *R. v. Shepard*, 3 B. & Ald. 414; so, if the special sessions had not been properly convened, *R. v. Worcestershire*, 2 B. & A. 228. In *R. v. Milverton*, 5 A. & E. 841, 846, decided on the old Acts,

Coleridge, J., said:—"The justices must hold their special sessions for the highways *within the limits* for which they respectively act. If any made an order for more, they would be acting out of *the limits* for which the sessions were held—there would be no jurisdiction in such case." See case *post*, p. 326.

In reference to the effect of the Municipal Corporation Act, 1835, and the construction to be put upon the 85th sec. in the Highway Act of the same session, we have to consider the times at which these respective Acts came into operation.

Prior to 33 Geo. 3, c. 13, no dates were put to the Acts, and all Acts were considered to have been passed on the last day of the session; but by that Act the clerk of Parliaments is directed to endorse on every Act of Parliament, "the day, month and year when the same shall have passed, and have received the Royal assent, and such indorsement shall be taken to be a part of such Act, and be the date of its commencement, where no other commencement shall be therein provided." In *Paget v. Foley*, 2 Bing. N. C. 691, it was held that where two statutes are passed in the same sessions, and are repugnant or contradictory to each other, the *later Act* will prevail, and have the effect of repealing wholly or *pro tanto* the previous statute; and this construction is to be taken as from the time when the Acts shall have been made to *come into operation*.

*Paget v.
Foley.*

In *Paget v. Foley*, the two Acts in question were the 3 & 4 Will. 4, c. 27 (sec. 42), and 3 & 4 Will. 4, c. 42 (sec. 3). The *first* Act received the Royal assent on 24th July, 1833, and was to come into force 1st January, 1834. The *second* received the royal assent on 14th August, 1833, and came into operation as from 1st June, 1833. The provisions in the *first* Act were held to govern and control those of the second, as the *first* was made to *come into force after the second*; and although passed first, it was construed as the "later" statute. This is precisely the relative position of the Highway and the Municipal Acts of the sessions of 1835. The Highway Act received the Royal assent on the 31st August, 1835, but was not to come into operation until the 20th March, 1836; the Municipal Act received the royal assent on the 9th September, 1835, and came into force on that day, thereby ante-dating the prior statute in its operation by nearly six months.

The construction to be put upon those Acts must be in accordance with the statute 33 Geo. 3, c. 13, and the judgment in *Paget v. Foley*; and, as remarked by Tindal, C. J., in that case, "if there is any thing irreconcilable with the first statute, it would be a strange proceeding that the legislature should designedly pass one law to be in force for some time in one year, and a different law on the same subject-matter to come into force the next."

From the 9th September, 1835, to the 20th March, 1836, The Highway Act 13 Geo. 3, c. 78, and the Amending Act 55 Geo. 3, c. 68, were in force, and co-existent with the Municipal Act. And as before shown, in accordance with the decision in *R. v. Gloucestershire (supra)*, and independently of whether or not Bristol was a county of a city, or merely a borough scheduled in the Municipal Act, that where a highway to be stopped up, &c., lay within the limit of the borough, the Recorder of the borough had alone the jurisdiction to enrol the order for stopping up such highway (a).

On the coming into operation of the new Highway Act on March 20th, 1836, there was no enactment in it which was inconsistent with the continued existence of the former jurisdictions; nor did the Act create any new jurisdiction. *The preliminary procedure alone was altered*; but the ultimate Court at which the justice's certificate should be enrolled, or to which an appeal should be made, *remained as before*, the Court "*for the limit*" in which the highway might lie.

On reviewing the proceedings prior to 1836, for the stopping up, &c. highways, it will be observed that the statute 55 Geo. 3, c. 68, had for its object the giving a greater notoriety of any intention to deprive the public of a highway than there was under 13 Geo. 3, c. 78. Under 13 Geo. 3, c. 78, the entire control was with the justices in special sessions; under 55 Geo. 3, c. 68, the public were more widely informed of what was about to be done by advertisements and notices;—still the order was with the special sessions; *but*, under that Act, it was to be confirmed by the quarter sessions *of the limit in which the highway was situate*. By the Highway Act, 1835, after 20th March, 1836, further regulations and publicity were provided, in addition to those required under 55 Geo. 3, namely, that the inhabitants in vestry should give their assent, and the certificate of the justices be lodged for public inspection at the office of the clerk of the peace of the county.

In this new regulation there exists no inconsistency with sec. 105 of the Municipal Act, or "any thing irreconcilable with that first statute," to use the language of Tindal, C. J., in *Paget v. Foley*. The duty cast on the clerk of the peace

(a) See *ante*, tit. "The Recorder and his court," remarks on the above case. *R. v. Gloucestershire*; also *R. v. Hull Recorder*,

6 A. & E. 638; *R. v. St. Lawrence, Ludlow*, 11 A. & E. 170; *R. v. St. Edmund's, Salisbury*, 2 Q. B. 71.

for the county by the legislature in sec. 85, Act 1835, is purely ministerial, and solely in respect of his being the most prominent public officer in the county at large, having a central office for the deposit of the certificate well adapted for the convenience of public inspection generally (a). The certificate is in fact deposited with him not only for inspection, but being "lodged" with him, he is directed by the statute to return it (and "read it") in open Court "at the sessions for the limit" (whether county or city) having jurisdiction in the matter, such sessions being those "for the limit within which the highway shall lie."

The mere requirement to make such deposit or lodgment of the justice's certificate with a clerk of the peace of the county could never have been intended to have the effect of repealing or overriding, by inference, the positive enactment of sec. 105 of the Municipal Act, giving the Recorder of a borough, within the limit of his borough, full jurisdiction over "all matters whatsoever cognizable by any court of quarter sessions of the peace in England." And "who shall have power to do all things necessary for exercising such jurisdiction notwithstanding his being the sole judge." See *R. v. Gloucestershire (supra)*; *R. v. Hull Recorder (supra)*, and other cases, *ante*, under tit. "The Recorder and his Court."

The legislature having imposed such duty on the county clerk of the peace which does not, as above remarked, conflict with the 105th sec. of the Municipal Act, that duty he is bound to perform. The performance of it in no way affects the authority of the Recorder, or his Court.

Where the legislature has intended to curtail the jurisdiction of the recorder's Court direct and positive words have been used, as in the exceptions to the above sec. 105; or as in the Lunatic Asylums Act, 1853, 16 & 17 Vic. c. 97, s. 108: see *R. v. Warwickshire*, 28 L. J. M. C. 249; *R. v. Kent*, 35 *ib.* 201; L. R. 1 Q. B. 385: (*infra*.)

The appeal is to the court of the limit.

So also it may be noticed that the appeal under sees. 88, 89, is to be made to the justices at "the said Quarter Sessions":—that is, to the *only* court previously mentioned in sec. 85,—the court of "Quarter Sessions for the limit" in which the highway to be dealt with shall lie. This will be again a continuance of the former practice, and a maintenance of the old jurisdiction.

(a) Other instances of a similar use made of the Clerk of the Peace as the depository of public

documents might be mentioned, such as the depositing with him railway plans and notices, &c.

There being no appeal, or, if any, the appeal being dismissed, the "said" sessions "shall" make the order asked for, s. 91; and on the completion of the new highway being made to the satisfaction of two justices, their certificate is to be returned "to the clerk of the peace" (using the language of sec. 85), "and by him to be enrolled amongst the records of the Court of Quarter Sessions next after such order shall have been made;"—such order having been made by the sessions *of the limit* in which the highway lay. And it may further be noticed, that the final view of the justices before making their certificate of the completion of the new highway, is to be made by two justices acting for the county, or for the limited jurisdiction of a city having a court of quarter sessions; in either case they make the return of their certificate of completion to the clerk of the peace of "the limit" of their *own* jurisdiction, and where the first certificate had been enrolled (*a*).

Sec. 86, of the Act 1835, provides that where it is proposed to stop up or divert more than one highway, which highways shall be deemed to be so connected together, as that they cannot be separated, stopped up, or diverted without interfering one with the other, it shall be lawful to include such different highways in one order or certificate. And on appeal (sec. 87) against the whole, or any part or parts of such order or certificate, the court may confirm the whole, or part or parts thereof, without prejudice to the other parts thereof.

Where, however, the highways (although they cannot

(*a*) It would not have been considered requisite to have so fully discussed this point of practice here or as under the tit. "Recorder and his Court" (*ante*), had it not been a long mooted *reata questio*, as to which was the right jurisdiction to proceed in for the stopping up of a highway lying within the limit of a borough having a court of quarter sessions. Recently, it may be mentioned, at a quarter sessions held for West Kent, the county justices enrolled a certificate of justices of the city of Rochester, for the stopping up a highway lying wholly within the jurisdiction of the Recorder's court for that city and "limit."

Such enrolment was clearly *ultra vires*. The author has, however, felt himself bound to treat the decisions of that court with respect: at the same time bearing in mind the remark of Lord Coke, when that very learned lawyer was told that a statesman was going to consult him upon a point of law;—"If it be of common law, I should be ashamed if I could not give him a ready answer; but if it be statute law, I should be equally ashamed, if I answered him immediately." In such spirit this vexed question has now been considered; the result of the argument is submitted to the judgment of the profession.

Where the highway to be stopped up, &c., lies in two jurisdictions; or where two highways are to be stopped up.

*Res v.
Milverton.*

conveniently be stopped up or diverted separately), lie within two jurisdictions, it appears to be necessary that there be a separate certificate and order in each jurisdiction. An instance of this class is reported, in *R. v. Milverton*, 5 Ad. & E. 841, decided under the Act, 55 Geo. 3, c. 68, where the highway to be dealt with lay in two highway special districts. The question arose on an indictment for the non-repair of a highway. The several highways mentioned in the indictment arose in Milverton parish, and were comprised in an order of justices, declaring them to be unnecessary, and directing them to be stopped up. It was, *inter alia*, stated in the special verdict:—"One portion of the highway mentioned in the first and third counts in the indictment, was wholly in Milverton; another portion, mentioned in the second and third counts was, as to half of its breadth, in the parish of Milverton; and as to the other half of its breadth in the parish of Oak. Both parishes were in Somersetshire. The highway was known as Blackgrove Lane, and comprehended as well the parts in the parish of Oak as those in Milverton. The portion of the highway stated in the order to be in Milverton was the same as that in the indictment; but no order of justices had been made for stopping such parts of Blackgrove Lane as were in the parish of Oak; and that the highway had never been allotted for repairs, under 34 Geo. 3, c. 64.

Milverton parish, it seems, was in one divisional highway sessions jurisdiction, and Oak parish in another. As stated in "Dickinson's Quarter Sessions," 6th ed., p. 17, "The Acts 13 Geo. 3, c. 78, and 55 Geo. 3, c. 68, while in force provided that notices of holding a special sessions for stopping or diverting a way should be "given to the justices, by the high constable or other proper officer, *within the limits of the division*"; and, at p. 15, he states:—"To constitute a legal special session, *every* magistrate of *the division* must have had an option presented to him of attending it." And at p. 16, he says:—"Where the Act directs a special sessions to be holden, its provisions must be strictly complied with."

In this case the objection was taken to the order that the two justices of the Milverton division had found the whole of the way useless, but had only stopped up *a part* of its breadth, no order having been made as to the other part lying in Oak parish. On these facts, Coleridge, J., remarked (p. 846):—"The justices must hold their special sessions for the highways

within the limits for which they respectively act; if any of them made an order for more, they would be acting out of the limits for which the sessions was held. It must be contended that, to make an order for stopping up the whole breadth of the way, there must be different special sessions, the justices *in each* making an order as to part of the way." Subsequently his lordship said, "I should think this was a *casus omissus* in the statute." Lord Denman remarked:—"Where, as in this case, the entire highway could not be stopped unless two sets of justices concurred, and there is no such concurrence, the statute is not carried into effect. Where a road runs through different districts, but a part of it is wholly within one, it might be very proper that the magistrates of the districts should communicate with each other, *and concur* in the order." And Patteson, J., said:—"If the difficulty could have been removed by four justices meeting and making orders for stopping the two portions of the road, well and good; but that course has not been adopted."

There are instances where the boundary of a city lies, as the boundary of the special sessional divisions in *R. v. Milverton*, along the middle of a highway; and there the same difficulty might arise if not met by sec. 86. The language there seems to point to separate highways; but may it not be also applicable to a highway lying in two jurisdictions? Each part would be under a distinct authority for repairs, and in all respects, excepting its actual area, be as two separate highways. It would seem that the only mode in which the highway, under such circumstances, could be stopped up, would be to obtain the joint view of four justices, two from each jurisdiction, making all their proceedings in combination, and enrolling the joint certificates of the four justices at the quarter sessions of each limit in which the several parts of the way might lie.

Under sec. 17, Act 1862, the highway board is bound to maintain the highways within their district in good repair. Should they fail in their duty, complaint may be made to a justice of the peace under sec. 18, when summonses will be issued to the highway board and the waywarden of the parish liable to repair the highway to attend at a petty sessions, and unless the board undertake to repair the road, or the waywarden denies the liability of the parish to do the repair, the justices may either themselves view the highway, or have a report made of its condition by some competent person, and, if satisfied the highway is not in a complete state of repair, it will be their duty to make an order on the board

Proceed-
ings where
roads are
out of re-
pair.

limiting the time for the repair to be done ; and should such order not be complied with, the justices may appoint some person to complete such repair at the cost of the board ; and which cost may be recovered as if the order had been made by an order of quarter sessions, and be removed into the Court of Queen's Bench for enforcement.

Where liability to repair a highway is disputed.

Where the liability to repair the highway is disputed the justices may direct a bill of indictment to be preferred at the assizes or quarter sessions for the county, &c., where the highway may be, against the inhabitants of the parish. And sec. 19 directs the payment of the costs. But this section, 19, only applies where the highway is an *admitted* highway : *R. v. Farrar*, L. R. 1 Q. B. 557 ; 7 B. & S. 554 ; 35 L. J. M. C. 210. And the court has no power over the costs when the jury find the road not to be a highway ; *R. v. Buckland*, 34 L. J. M. C. 178 ; *R. v. Odell*, 34 J. P. 534.

See as to the power of appeal where the board makes an order for the repair of a highway which they are not legally liable to repair ; Act 1864, secs. 38, 39, & 42, *ante*, pp. 297, 298.

Extraordinary traffic.

On the certificate of the surveyor to the authority liable to repair a highway, whether a main road or not, that, having regard to the average expense of repairing highways in the neighbourhood, extraordinary expenses have been incurred by such authority in repairing such highway by reason of the damage caused by excessive weight passing along the same, or extraordinary traffic thereon, such authority may recover in a summary manner from any person by whose order such weight or traffic has been conducted the amount of such expenses as the court may consider had been thereby incurred, sec. 23, Act 1878 (*a*).

The language of this section has been explained by Lindley, J., in *Lord Aveland v. Lucas*, 49 L. J. C. P. 643 ; 5 C. P. D. 211 ; and was adopted by Lord Coleridge, L. C. J., in *Wallington v. Hoskins*, 50 L. J. M. C. 19, 24 ; Lindley, J., said :—" It appears to me that those words must mean excessive and extraordinary with reference to the ordinary use and traffic upon and over the road. If any thing is done of an unusual or extraordinary kind, the person doing it must pay the damage thereby occasioned. It is the ordinary nature of the traffic over the road which is to be the standard." And as Field, J., put the question :—" Before

(*a*) The limitation of the six months for a summons on the non-payment of the expenses caused

by the extraordinary traffic will date from the surveyor's certificate, *White v. Colson*, 46 J. P. 565.

we can construe such words as 'excessive' and 'extraordinary,' we must see what is normal and ordinary"; S. C.

In the case of *Lord Aveland v. Lucas*, a locomotive engine and trucks were used for carrying goods and materials for the ordinary purposes of the appellant's estate. The engine was constructed in compliance with the requirements of sec. 28, Act 1878, an order was made against the appellant and the Court confirmed it (a).

In the case of *Wallington v. Hoskins*, there were stone quarries in three neighbouring parishes, the roads had been constructed for use in reference to the quarries, and the conveyance of stone was a recognised business there; the quarry owners appealed against an order made on them for the repair of the roads; it was held that there was no evidence to support the order.

The conveyance over a highway of materials for the building a house where the weights of the loads required the use of "trails" when going down hill causing damage to the highway, the ordinary traffic on the highway was conducted without the use of "trails." This was held not to be such a damage to the highway within the 23rd sec., for which the party would be liable: *Pickering Lythe East Highway Board v. Barry*, 8 Q. B. D. 59; 51 L. J. M. C. 17. Excessive traffic.

In that case Lopes, J., having spoken of the general inadvisability of framing a definition, said it was difficult to come to a decision without defining the matter in his mind and he should do so thus:—"the legislature intended something unusual in weight, or extraordinary in the kind of traffic, either as compared with what is usually carried over roads of the same nature in the neighbourhood, or as compared with that which the road, in its ordinary and fair use, may be reasonably subject to. It would not be sufficient to compare the weight and traffic complained of with the traffic usually carried on the particular road; it might be the traffic was usually of the lightest kind; but surely the legislature never intended that a man was not to use the road for carrying materials for building a dwelling-house, farmhouse, or barn, provided he used it in a reasonable way for those purposes. The comparison must be larger. Should this definition not be exhaustive it may be found useful." It was held that the using trucks with traction engines for the conveyance of manure would be "extraordinary traffic"; *R. v. Ellis*, 8 Q. B. D. 468.

(a) See *Williams v. Davies*, 44 J. P. 347; *R. v. Williamson*, 45 J. P. 505.

INDUSTRIAL SOCIETIES.

The Industrial and Provident Societies Act 1876, 39 & 40 Vict. c. 45, consolidated and amended the law relating to industrial and provident societies, assimilating the same to the law, in certain respects, relating to friendly societies.

Sec. 10, sub-sec. 3 enacts as offences under the Act similar provisions as are in the Friendly Societies Act, 1875 (*ante*, p. 263). Sec. 14, sub-sec. 3, (a), (b), (c); and also re-enacts sub-sec. 4 thereto as to liability of members, and the constituting a new offence; and it further provides against the society carrying on the business of bankers (d).

A person fraudulently obtaining possession, or withholding or misapplying any property of the society will be liable on summary conviction to a penalty of not exceeding £20, nor less than 20s.; and in default of delivering up the property, imprisonment with or without hard labour for not exceeding three months. Sec. 12, sub-sec. 10.

The penalties (where no specific penalty is provided for an offence) will, under sec. 18, sub-sec. 3, be the same as those under sec. 32, sub-sec. 3, of the Friendly Societies Act, 1875. (See p. 365.) And the appeal clause, sec. 19, sub-sec. 6, is the same as in the Friendly Societies Act, 1875, sec. 33, sub-sec. 5 (p. 265.) The evidence clause as to documents (sec. 39, p. 265), is repeated in sec. 24 of the Industrial and Provident Societies Act.

LANDLORD AND TENANT.

Distress; Fraudulent Removal of Goods to avoid Distress.

Removal
of goods.

The 11 & 12 Geo. 2, c. 19, s. 3, provides that if a tenant shall fraudulently or clandestinely convey away, or carry off his goods from the demised premises to prevent a distress, the lessor may within thirty days next thereafter, distrain on the goods removed wherever found for the rent in arrear, if not, before seizure, sold *bonâ fide* for a valuable consideration to a person not privy to the fraud. And any person wilfully and knowingly aiding or assisting in such removal, or concealing the goods removed will forfeit double the value of the goods carried off or concealed. And by sec. 4 where the

goods removed do not exceed in value £50 the landlord may apply to two justices, who may adjudge the offender to pay double the value of the goods; and if he refuse, they shall by warrant levy the same by distress; and for want of distress commit the offender to hard labour for six months.

To convict the party for assisting in the fraudulent removal of the goods, it must appear that he did so to prevent a distress; *Brooke v. Noakes*, 8 B. & C. 537. And the removal was secret to elude the distress; *Parry v. Duncan*, 7 Bing. 243. The rent must be due, *Rand v. Vaughan*, 1 Bing. N. C. 767; 1 Scott, 670.

On the order of conviction the relationship of landlord and tenant must appear, *R. v. Davis*, 5 B. & Ad. 551; 2 N. & M. 349. But the value of the goods need not be specified; it will be sufficient if the justices find generally that the value was under £50; see *R. v. Rabbits*, 6 D. & R. 343. It must appear that a *complaint* was made in writing by the landlord, his bailiff, agent, or servant. It was held insufficient for the order to state that the defendant was *duly charged* in writing. *Ex parte Fuller*, 13 L. J. M. C. 141; New. Sess. Cas. 284. So also it has been held that the order was bad without stating that the offender was summoned, and the complaint was adjudged to be true on evidence given upon oath, and that there was proof before the justices that the party wilfully and knowingly assisted in the removal of the goods, although it specified the full proof of the offence on which the justices adjudicated. *Ex parte Morgan*, 4 Jur. 916, B. C.

Under this statute by sec. 5, a bare right of appeal is given to the quarter sessions in general terms. No conditions of any description are attached to the appeal; but the 6th section provides for the appellant entering into his recognizance to try the appeal. The provisions of sec. 31 of the Summary Jurisdiction Act, 1879, regulating an appeal as to notices or otherwise, has been held to apply to this class of appeal; see *R. v. Salop JJ.*, 50 L. J. M. C. 72, but see that case discussed (*infra*) under Tit. "Summary Jurisdiction Acts," *post*.

Under the *Railway Rolling Stock Protection Act*, 1872, 35 & 36 Vict. c. 50 (an act to protect railway rolling stock from distraint when on hire), by sec. 3, "rolling stock being in a work shall not be liable to distress for rent payable to a tenant of the work, if such stock is not the actual property of such tenant, and has the name of the owner affixed on it on a metal plate. By sec. 4, where such stock has been dis-

Railway
rolling
stock
when
exempt.

trained, a court of summary jurisdiction may order its restitution, on payment of its value, with costs. And by sec. 6 any party who thinks himself aggrieved by any such order, or dismissal of his complaint, may appeal therefrom, subject to the following conditions and regulations:—

Appeal.

1. The appeal is to be made to *some* court of general or quarter sessions for the county or place in which the cause of appeal arises holden not less than fifteen days, and (unless adjourned by the Court of Appeal) not more than four months after the decision of the court of summary jurisdiction.

2. The appellant must, within seven days after the cause of appeal has arisen, give notice to the other party, and to the court of summary jurisdiction of his intention to appeal and the ground thereof.

3. And immediately after enter into his recognizance to try the appeal, &c.

As to the service of the notice on the "Court of Summary Jurisdiction," see *Curtis v. Buss* (*infra*, p. 72, 133), 3 Q. B. D. 13; 47 L. J. M. C. 35; *eo nom. Ex parte Curtis*, 26 W. R. 210.

LUNATIC PAUPERS.

The Act. "The Lunatic Asylum Act, 1853," 16 & 17 Vict. c. 97, consolidated and amended the law relating to lunatic asylums in counties and boroughs, and the maintenance and care of lunatics.

The Act directed justices in counties and boroughs to provide asylums: secs. 2—7.

Boroughs annexed to counties. Every borough not having a separate quarter sessions, recorder, and clerk of the peace, became at the passing of the Lunacy Act, 1853, annexed to, and is now treated and rated as part of the county in which the borough is situate (sec. 131); see also 28 & 29 Vict. c. 80, "The Lunacy Amendment Act, 1865;" where the borough neglected to provide an asylum, see 16 & 17 Vict. c. 97, s. 10.

Boroughs deemed annexed to counties. Boroughs contributing to the county asylum at the commencement of the Act, 1853, are deemed to have an asylum, and will so continue until the borough authorities give notice of separation; and until then the borough will remain liable to contribute towards the expense of the establishment: 16 & 17 Vict. c. 97, s. 8.

All boroughs created after the commencement of the Act of 1853, for the purposes of that Act, are deemed to be annexed to the county in which the borough is situate: 18 & 19 Vict. c. 105, s. 7.

A superintending committee of visitors is annually to be appointed under the Act of 1853, sec. 22, by the justices of the county at the January quarter sessions, secs. 3, 12; and where a borough, which is attached to the county, has a separate court of quarter sessions, the recorder at the like sessions will appoint two justices of his borough to be members of the county visiting committee: 16 & 17 Vict. c. 97, s. 9; 19 & 20 Vict. c. 87.

Superin-
tending
committee
in county.

Members
appointed
by the re-
corder.

Sec. 67, 16 & 17 Vict. c. 97, makes provision for the mode in which a pauper lunatic is to be transferred to an asylum. It may be by order of a justice "on view" of the pauper, or personal examination, or other evidence that the pauper is a lunatic; or the order may be made by the officiating clergyman, with the overseer or relieving officer "upon view," or examination of the pauper. The certificate of the medical officer is to be taken as conclusive proof of the lunacy; and by s. 122, the making a false certificate is a misdemeanour.

Transfer
of pauper
to asylum.

Sec. 67 further provides that any justice may examine a pauper deemed to be a lunatic, at his own abode or elsewhere, and proceed in all respects as if such pauper were brought up before him in pursuance of an order for that purpose; and where such pauper cannot, on account of his health, or other cause, be conveniently taken before any justice, such pauper may be examined at his own abode, or elsewhere, by an officiating clergyman of the parish in which he is resident, together with a relieving officer, and such officiating clergyman, together with such overseer or relieving officer, may, by an order, direct such pauper to be removed into the asylum (a).

Pauper may
be ex-
amined at
his own
residence
by a justice
or officiat-
ing clergy-
man, and
order made
for re-
moval to an
asylum.

A justice of a borough not having a separate court of quarter sessions has no jurisdiction to send a pauper to an asylum: *Faversham v. The Isle of Thanet Union*, 2 B. & S. 275; but where the lunatic has become chargeable, he may be removed under the common order: *R. v. Barnsley*, 18 L. J. M. C. 170.

Borough
justice no
jurisdic-
tion.

(a) Commissioners of lunacy may order the removal of a lunatic pauper to an asylum: 25 & 26 Vict. c. 111, ss. 31—33; as to the power given to visitors of

the asylum, sec. 16 & 17 Vict. c. 97, s. 77; 18 & 19 Vict. c. 105, s. 8; as to lunatics wandering abroad, see 16 & 17 Vict. c. 97, s. 68,

Removal under sec. 67 not within meaning of 7 & 8 Vict. c. 101, s. 56.

An order made for the removal of a lunatic pauper under sec. 67 is not within the meaning of 7 & 8 Vict. c. 101, s. 56, under which the workhouse of the union or parish is considered as situate in the parish to which the pauper is chargeable. So that where a pauper is in the union workhouse, and there becomes a lunatic, he may be considered as *abiding* in the parish in which the workhouse is situate; and an order for the pauper's removal to the asylum may be made by the officiating clergyman and relieving officer of that parish. The 7 & 8 Vict. c. 101, s. 56, applies to where

7 & 8 Vict. c. 101, s. 56, applies only to questions of settlement.

it is necessary to inquire into the settlement of the pauper, and on whom the burthen of the maintenance shall fall; in such case regard must be had to the place where the pauper's previous place of abode was: *R. v. Pemberton, and Another, JJ., R. v. Smith*, 49 L. J. M. C. 29; 5 Q. B. D. 95^a; 41 L. T. 664; 28 W. R. 362. See also *Kettering v. Northampton Lunatic Asylum*, 34 L. J. M. C. 198.

Residence in asylum deemed residence in parish chargeable for purposes of settlement.

And sec. 95 of 16 & 17 Vict. c. 97, enacts that any pauper lunatic confined under the provisions of the Act, shall for the purposes of the Act be chargeable to the parish from which, at the instance of some officer or officiating clergyman of which, he has been sent to the asylum; unless and until, such parish shall have established that such lunatic is settled in some other parish, or that it cannot be ascertained in what parish such lunatic is settled; and every pauper lunatic who is chargeable to any parish whilst he resides in an asylum, will be deemed, for the purposes of his settlement (*a*), to be residing in the parish to which he is chargeable. See *R. v. Whitby Union*, L. R. 5 Q. B. 325; 39 L. J. M. C. 97; 22 L. T. 336; *Somerset Clerk of the Peace v. Shipham*, 32 L. J. M. C. 83.

Chargeability of pauper lunatics found in a borough.

The Lunacy Acts Amendment Act, 1862, 25 & 26 Vict. c. 111, s. 45 (repealing previous provisions on the subject (*b*)), enacts, that where a pauper lunatic is not settled in the parish by which, or at the instance of some officer or officiating clergyman of which, he has been sent to an asylum, &c., and it cannot be ascertained in what parish he is settled, and such lunatic is found in a borough which has a separate court of quarter sessions, and is not liable, under 5 & 6 Will. 4, c. 76, to the payment of a proportion of the

(a) See "Irremovability" under tit. "Removal."

(b) See 18 & 19 Vict. c. 105, s. 14; *Birmingham v. Bacchus*, 8

E. & B. 870; 27 L. J. M. C. 181; affirmed on error, 29 L. J. M. C. 56.

sums expended out of the county rate (*a*), or is found in any borough which, under 12 & 13 Vict. c. 82, is exempted from liability to contribute to the payment of the expenses incurred for maintaining pauper lunatics chargeable to the county in which such borough is situate (*b*), such lunatic shall be chargeable to the borough in which he is found; and it shall not be lawful for any justices to adjudge such lunatic to be chargeable to any county, nor to make any order upon the treasurer of any county, for the payment of any expenses whatsoever incurred, or to be incurred, in respect of such lunatic.

All the provisions of the Lunacy Act, 16 & 17 Vict. c. 97, as to the mode of determining that a pauper lunatic is chargeable to a county, and as to orders to be made for the payment of the expenses in respect of such lunatic, and for the repayment thereof to the treasurer of a county, will extend to the case of a borough, to which a lunatic is made chargeable under this section, as if such borough were therein mentioned instead of a county (*c*). Sec. 45, Act 1862 (*supra*).

Under sec. 96, of the 16 & 17 Vict. c. 97, the justices by whose order the lunatic pauper had been sent to the asylum, or two other justices of the county, or any two visiting justices, may make an order on the guardians of the parish from whence the pauper had been sent to the asylum for payment of the maintenance of the pauper; and such order may be retrospective or prospective, or partly so respectively.

There is no limit to this order; but the parish so charged can only recover one year's charges from the union that may ultimately be adjudged to be the union of settlement of the pauper: *Finch v. York Union*, 2 Q. B. D. 15; 46 L. J. M. C. 120; 35 L. T. 708; 25 W. R. 42; see sec. 97, *post*, p. 341.

Under sec. 98, 16 & 17 Vict. c. 97, if any pauper be not settled in the parish in which, or at the instance of some officer or officiating clergyman of which, he is sent to any asylum, &c., and it cannot be ascertained in what parish such pauper lunatic is settled; and if a relieving-officer of such first-mentioned parish, or of the union in which the

Order of maintenance on removing parish.

When settlement cannot be ascertained pauper chargeable to the county.

(*a*) See 2 & 3 Will. 4, c. 64; 5 & 6 Will. 4, c. 76, s. 117.

(*b*) See 12 & 13 Vict. c. 82.

(*c*) As to the mode of charging the costs of a lunatic pauper to

a borough, see 39 & 40 Vict. c. 61, s. 26; "The Divided Parishes and Poor Law Amendment Act, 1876" (see also 16 & 17 Vict. c. 97, s. 99.)

same is situate, or the overseers thereof, shall give ten days' notice to the clerk of the peace of the county in which such lunatic was found, to appear for such county before two justices thereof, at a time and place to be appointed in such notice; and such justices, upon the appearance of such clerk of the peace, or of any one on his behalf, or, in case of his non-appearance upon proof of his having been served with such notice, to inquire into the circumstances, and to adjudge such pauper lunatic to be chargeable to such county, and order the treasurer of the county to pay to the guardians of any union or parish, or the overseers of any parish, all expenses incurred by or on behalf of such union or parish in the examination of the lunatic, &c., and monies paid for his maintenance, &c., and incurred within twelve calendar months (a) previous to the date of the order. The section also provides for the payment by the treasurer of the county of all charges for the future care of the lunatic at an asylum. And the justices may direct inquiry to be made to ascertain the parish of the pauper's settlement, and delay judgment until the result of such inquiry: And it is provided, that every county, to which any pauper lunatic is adjudged to be chargeable, may, at any time thereafter, inquire as to the parish in which such lunatic is settled, and may procure such lunatic to be adjudged to be settled in any parish.

A legitimate child born in England of Irish parents who have no settlement, has still its birth settlement to fall back on: and where such a child is a pauper lunatic, the order should be made on the parish of its birth (*ib.* s. 97), and not on the county (s. 98): *R. v. Newchurch*, 32 L. J. M. C. 19 (b). And see *Somerset Clerk of the Peace v. Shipham*, 32 L. J. M. C. 83, where it was held that this section applies to the expenses of maintaining the lunatic wife of a man born in Scotland and having no settlement in England, and who has been sent to the asylum under sec. 97.

Under the above proviso (in s. 98) the county may obtain an order on the *same* parish which had obtained an order on the county, and the first order be treated as a conditional or interim order: *All Saints, Poplar v. Middlesex*, 29 L. J. M. C. 186; 2 E. & E. 829.

Sec. 99 provides for the reimbursement of the county the expenses paid on account of a lunatic afterwards adjudged to belong to a parish. See also 39 & 40 Vict. c. 61, s. 26.

(a) This limit of time applies only to the cost of maintenance.

(b) See 8 & 9 Vict. c. 117, s. 2.

A person who has resided in a parish or any part of a union (a) for one whole year gains a status of irremovability (b). But the time during which he shall be confined in a lunatic asylum, or house duly licensed, or hospital registered for the reception of lunatics (*inter alia*) will be excluded from such time.

A residence in a charitable "home" for lunatics by a pauper lunatic, and maintained entirely by the funds of the institution from monies collected at church offertories throughout the county and other subscriptions, is not such a residence as comes within the exemption from the computation of the time for creating irremovability. *Fulham Guardians v. The Isle of Thanet Guardians*, 45 L. T. 678, 138.

By sec. 102 of 16 & 17 Vict. c. 97, the cost of the main- When tenance of a lunatic pauper, removed to an asylum, regis- pauper tered hospital, or licensed house, who would, at the time of exempt his being conveyed to such asylum, &c., have been exempt from removal, from removal to the parish of his settlement, or place of parish removing birth, shall be paid by the overseer of the parish where it is not in a union; or be charged to the common fund of the him to union; and no order shall be made on the parish of the asylum chargeable. the pauper's settlement: (and sec. 5 of 12 & 13 Vict. c. 103, is repealed.)

At the time of the passing of the Act, the lunatic had obtained a status of irremovability by residence in M. parish. He was not in a union; but an order had been made on L. parish for his maintenance on his going into the lunatic asylum. On the passing the Act, 16 & 17 Vict. c. 97, s. 102, and on the refusal by L. to make any further payments, because of the residence in M., the court held that M. was the parish liable, notwithstanding the existing order on L. *Knowles v. Trafford*, 26 L. J. M. C. 51; S. C. Ex. Ch. *ib.* 188. See also *R. v. West Ward Union*, 26 L. J. M. C. 29, referring to 7 & 8 Vict. c. 101, s. 56.

Where the lunatic is removed to a fresh asylum, see *In re Marman's Trust*, 8 Ch. D. 256; 38 L. T. 797; 26 W. R. 621.

A lunatic child of over the age of sixteen had been sent to an asylum under an order of justices, and was at the charge of the parish of the widowed mother, from which she was irremovable by reason of residence, it was held that the child's maintenance in the asylum, effect as "relief."

(a) See *Palmesgate v. West Ham*, 45 L. T. 610. & 25 Vict. c. 55, s. 1; 28 & 29 Vict. c. 79, s. 8.

(b) 9 & 10 Vict. c. 66, s. 1; 24

chargeability was not to be deemed relief given to the mother so as to exclude the time during which the child was in confinement from the computation of the time from the mother's residence : *R. v. St. Mary, Islington*, 3 B. & S. 46 ; 31 L. J. M. C. 233 ; see *R. v. Elvet (Ink.)*, 29 L. J. M. C. 17 ; 4 & 5 Will. 4, c. 76, ss. 56, 57. But the cost of the maintenance of a lunatic wife is relief given to the husband ; and the period of the relief given is to be deducted in computing the time of their residence for the purpose of testing his irremovability : *R. v. St. George's, Bloomsbury*, 32 L. J. M. C. 217 ; 4 B. & S. 108.

A woman who had been living apart from her husband became a lunatic pauper and chargeable. Her husband was irremovable from parish A. by residence. But his parish of settlement was B. An order was held to be properly made on B. for the maintenance of the wife, and not on the parish where he had acquired the status of irremovability : *R. v. St. Clement's Danes*, 32 L. J. M. C. 5 ; 7 L. T. 315 ; (sec. 97). See also *R. v. St. George's, Bloomsbury*, 4 B. & S. 108 ; 32 L. J. M. C. 217 ; *R. v. St. Mary Arches, Exeter*, 31 L. J. M. C. 77 ; 1 B. & S. 890 (a).

Where a lunatic child above the age of sixteen but unemancipated was removed to the asylum from the workhouse of the parish from which her father was irremovable, but the father ceased to be irremovable between the time of the child going to the workhouse and becoming a lunatic, it was held that the order for maintenance in respect of the child should be made on the parish of the father's settlement and not that of his residence, as when he ceased to be irremovable the child also ceased : *R. v. St. Ann's, Blackfriars*, 2 E. & B. 440 ; 22 L. J. M. C. 137. But where the father was irremovable at the time of the child going to the asylum, the parish from which he was then irremovable continued liable for its maintenance, and not the place of the father's settlement : *R. v. St. Giles (Overseers)*, 3 E. & E. 224 ; 30 L. J. M. C. 12.

A father having become irremovable by residence died, leaving a widow and unemancipated daughter who continued to reside in the same parish until the daughter became chargeable and was sent to the workhouse. The widow then left the parish of her irremovability to reside elsewhere. Shortly after, the daughter was removed to a lunatic asylum,

(a) As to the husband's liability to maintain the wife, see 13 & 14 Vict. c. 101, s. 5 ; 39 & 40 Vict. c. 61, s. 20.

and, three months later, was discharged and sent to her mother. The widow had no settlement of her own; the order of maintenance was held to be rightly made on the parish of the father's settlement: *R. v. St. Mary Arches, Exeter*, 31 L. J. M. C. 77; 1 B. & S. 890. Had the mother continued her residence in the parish where her husband had resided, the order should have been made on that parish: *R. v. St. Mary, Islington*, 3 B. & S. 46; 31 L. J. M. C. 233; *R. v. St. Giles (Overseers)*, 3 E. & E. 224; 30 L. J. M. C. 12.

Where a pauper lunatic had acquired a status of irremovability by residence, and was removed by her parents from her service into a different union, and from whence she was removed to the county asylum; it was held, as she was incapable of exercising any intention of abandoning her residence, she still retained her status of irremovability notwithstanding the changes in her places of residence which had been caused, not by her own will, but by the acts of her relatives: *R. v. Whitby Union*, L. R. 5 Q. B. 325; 39 L. J. M. C. 97. The parish of irremovability is primarily liable: *Leeds v. Wakefield*, 7 E. & B. 258; 26 L. J. M. C. 37.

The general law of settlement of the poor applies to the settlement of pauper lunatics; but there are some special enactments made in reference to them to be noticed.

The Lunatic Asylums Act, 1853, 16 & 17 Vict. c. 97, s. 97, enacts, that any two justices for the county or borough in which any asylum, registered hospital, or licensed house in which any pauper lunatic is or has been confined, is situate, or to which such asylum, wholly or in part belongs, or from any part of which any pauper lunatic is, or has been, sent for confinement, may at any time inquire into the last legal settlement of such pauper lunatic, and if satisfactory evidence can be obtained as to such settlement in any parish, such justices shall, by order under their hands and seals, adjudge such settlement accordingly, and order the guardians of the union to which the parish, in which such lunatic is adjudged to be settled, belongs, or the guardians of such parish in case such parish be a union, or under a board of guardians; and, if not, then the overseers of such parish, to pay to the guardians of any such union or parish, or the overseers of any parish, all expenses incurred by or on behalf of such union in or about the examination of such lunatic, and the bringing him before a justice or justices, and his conveyance to the asylum, hospital, or house, and of all monies paid by such last-mentioned guardians or overseers to the treasurer, officer, or proprietor of the asylum,

Lunatic Asylums Act, 1853, s. 97. Two justices may order maintenance, &c., on parish of settlement.

hospital or house, for the lodging, maintenance, medicine, clothing and care of such lunatic, and incurred *within twelve months* previous to the date of such order; and if such lunatic is still in confinement, also to pay to the treasurer, officer, or proprietor of the asylum, hospital or house, the reasonable charges of the future lodging, maintenance, medicine, clothing and care of such lunatic. And the guardians and overseers on whom any such order is made shall immediately pay to the guardians or overseers to whom the same are ordered to be paid the amount of the expenses and monies by such order directed to be paid to them, and from time to time pay to the said treasurer, officer, or proprietor of the asylum, hospital or house, the future charges aforesaid.

Jurisdiction of justices.

The finding the pauper lunatic in confinement is the foundation of the jurisdiction of the justices to make their order: *R. v. Rhylldlan*, 19 L. J. M. C. 110; *R. v. Crediton*, 27 L. J. M. C. 265; *R. v. Carnarvon Union*, 3 New S. C. 708. And the same was held in *R. v. Faversham*, 21 B. & S. 275; 31 L. J. M. C. 116 (a), and in which case Wightman and Mellor, JJ., further held that the validity of the order was not affected by the fact that the order of admission of the pauper to the asylum was made by a justice having no jurisdiction; to which Crompton, J., dissented, being of opinion that sec. 97 must be read with sec. 67, and applied only to a pauper lunatic *lawfully* confined. Erle, J., in *R. v. Caenarvon*, thought it would be salutary that the inquiry should commence on the finding a pauper lunatic in confinement.

Justices may make an order on guardians beyond jurisdiction.

By sec. 100, 16 & 17 Vict. c. 97, justices may make the order for the maintenance of the lunatic pauper upon the guardians of any union or parish, or overseers thereof, although such parish or union be out of the jurisdiction of such justices.

Guardians may recover costs and obtain orders.

By 39 & 40 Vict. c. 6, s. 25, the board of guardians of a parish may recover the costs of and obtain orders for the maintenance of a pauper in like manner as the guardians of a union can do under the provisions of the 11 & 12 Vict. c. 100; and from and after September 29, 1876, such guardians, when authorised by the local government board to do so, shall be entitled to apply for orders of removal, and to defend appeals against any such orders or (*sic*)

(a) In *R. v. Faversham* or (*S. C.*) *Faversham v. Isle of Thanet*, it was held that sec. 67 must be read with sec. 132, so

that a justice of a borough not having a quarter sessions, had no jurisdiction to send a lunatic to an asylum.

obtained, in the place of the overseers, and with the like powers, and subject to the like liabilities as guardians of a union are entitled or are subject to in respect of such orders.

By sec. 108 of 16 & 17 Vict. c. 97, it is enacted that—
 If the guardians of any union or parish, or the overseers of any parish, feel aggrieved by the order adjudging the settlement of a lunatic, they or he may appeal against the same to the next general quarter sessions of the peace for the county in behalf of which such order has been obtained, or in which the union or parish obtaining such order is situate; or in case such parish or union extend into several jurisdictions, then to the next general quarter sessions of the peace for the county or borough in which the asylum, registered hospital, or licensed house in which such lunatic is or has been confined is situate; and such sessions upon hearing the appeal shall have full power finally to determine the matter.

It was held in *R. v. Yorkshire West Riding*, 26 L. J. M. C. 41, that either the overseers or the guardians, or both, had the right of appeal under the above sec. 108; and in *R. v. The Medway Union*, 37 L. J. M. C. 100, the court decided that the overseers still retained that right, notwithstanding 24 & 25, c. 55, s. 7, enacting that orders in lunacy may be obtained by or appealed against by boards of guardians. The statutes are not inconsistent with each other; and the guardians may appeal against and defend orders in respect of lunatic paupers, made chargeable on the common fund of the union, in like manner and subject to the same incidents and provisions as are contained in 16 & 17 Vict. c. 97, in respect of lunatic paupers chargeable to a parish in such union. See also *Droitwich v. Worcester*, 32 L. J. M. C. 196.

In construing the above 108th section in *R. v. Warwickshire*, 28 L. J. M. C. 249, Crompton, J., expressed as a dictum, that the last branch of the section meant, when the parish, in which the pauper and asylum were, was not wholly within one jurisdiction, but partly in the borough (which was the case with Birmingham, having a separate quarter sessions and recorder), then the situation of the asylum should determine the tribunal.

But in a subsequent case, *R. v. Kent JJ.*, 35 L. J. M. C. 201, where the county asylum was wholly within the borough of Maidstone, and the appeal was against an order obtained by the guardians of the Medway Union, which was partly in the county of Kent and partly within the city of Rochester, Blackburn, J., in giving his judgment, said, he could not agree with the above dictum of Crompton, J., and thought

Appeal—
 16 & 17
 Vict. c. 97.
 s. 108.

Overseers
 right of
 appeal.

[L. R. 3
 Q. B. 283,
 S. C.]

Also the
 guardians.

To what
 sessions
 appeal to
 be made.

[L. R. 1
 Q. B. 385,
 S. C.]

that he would not, on consideration, adhere to it. His lordship stated, that the legislature seemed to have thought that difficulties might arise where the parish or union was in several *counties*, and made the solution of the difficulty depend on the situation of the asylum. The term, "several jurisdictions," he considered must be construed as if it were, "several *such* jurisdictions,"—that is,—counties; and in that view Lush, J., agreed.

The ultimate decision in both cases was that the appeal against an order adjudging the settlement of a pauper lunatic would be to a county and not to a borough sessions, Lord Campbell remarking in *R. v. Warwickshire*, "the Act expressly points out the way in which the appeal is to be heard, viz., by the county justices;—to quote the words of the Act,—the appeal is to be to the quarter sessions 'for the county *in behalf of which* such order has been obtained, or *in which* the union or parish obtaining such order is situate.'"

In *R. v. Warwickshire*, above quoted, *R. v. Shropshire JJ.*, 2 Q. B. 85; 10 L. J. M. C. 138, was referred to in argument to establish the proposition that the borough quarter sessions had exclusive jurisdiction to hear appeals against orders of removal made by borough justices. But the distinction rests in this, that that case had reference to a statute, 8 & 9 Will. 3, c. 30, s. 6, anterior to the Corporation Reform Act giving the recorder's court as full a jurisdiction as the county quarter sessions had (with three limited exceptions), but this later Act, 16 & 17 Vict. c. 79, s. 108, expressly points out the way in which the appeal is to be heard. See also *R. v. St. Edmund's, Salisbury*, 2 Q. B. 72; *R. v. Liverpool Recorder*, 15 Q. B. 1070; *R. v. Lancashire JJ.*, 18 Q. B. 361 (a).

The depositions.

Sec. 109 provides that within seven days copies of the depositions on which the order was made shall on application be given by the clerk to the justice to the party authorised to appeal against the order; but no omission or delay in furnishing the copy will be a ground of appeal. On the trial no objection can be taken that such depositions furnish no sufficient evidence to support the order or otherwise.

Notice of appeal.

By sec. 110, notice of appeal in writing must be sent by post or otherwise to the party on whose application the order was obtained within twenty-one days after the sending or delivery of the copy or duplicate of the order and state-

(a) See *Paget v. Foley*, 2 Bing. N. C., ante, "Highways." p. 324.

ment as under, sec. 107 (*a*), unless within twenty-one days a copy of the depositions be applied for by the party intending to appeal, in which case a further period of fourteen days after the sending such copy will be allowed for the giving such notice of appeal (*b*).

With the notice of appeal fourteen days at the least before the first day of the sessions at which the appeal is intended to be tried, the appellant must send or deliver by post or otherwise to the respondent a statement in writing under their or his hands or hand, or where the appellants are the guardians of a union or parish, under the hands of three or more of such guardians, notice of the grounds of such appeal; and the appellant will not be allowed to go into or give evidence on any other grounds than those set forth in such statement; sec. 111. The grounds of appeal need not be served with the notice. See *R. v. Stepney Union*, 43 L. J. M. C. 145.

A signature by the clerk to the guardians as "clerk to the aforesaid guardians" is sufficient: *R. v. Newport Union (Guardians)*, 33 L. J. M. C. 155; *R. v. Glamorganshire*, 18 L. J. M. C. 118. Lunatic orders are excepted from Baines' Act, sec. 2.

No objection can be taken as to the form of setting out the grounds of adjudication or appeal, and no objection to the reception of legal evidence offered in support of any such ground alleged to be set forth in any such statement will prevail, *unless* the court be of opinion that such alleged ground is so imperfectly or incorrectly set forth, as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial; and it is provided that in all such cases the court shall have the power of amendment, and the officer of the court may, under order of the court, forthwith amend the statement, on such terms as to costs, or the postponement of the hearing, as the court may think just. Sec. 112.

Upon objection being made to the form of the order the court may amend any omission or mistake. Sec. 113.

Sec. 117 of 16 & 17 Vict. c. 97, enacts that where an order has been made under the Act, and the copy or duplicate thereof sent as required, such order may be abandoned by the party obtaining the same by his giving notice in

(*a*) See *R. v. Shrewsbury Recorder*, tit. "Appeal," *ante*, p. 110.

(*b*) See cases on this point as to the limit of time for appeal; tit. "Appeal," p. 125.

writing (sent by post or delivered) under the hand of such party, or where obtained by the guardians of any union, under the hands of any three or more of them (or of their clerk: *R. v. Newport Union, supra*), of their abandonment of such order; and thereupon such order and all proceedings consequent thereon will become null and void, and shall be in no way given in evidence, in case of obtaining another order for the same purpose. But the party abandoning the order shall pay all costs incurred by reason thereof, to be taxed by the proper officer of the court before which such appeal would have been tried if not abandoned.

Omission or mistake in drawing it up; and if it be shown that sufficient evidence was in proof before the justices making the order to have authorised the drawing it up free from mistake, the court may amend the order and give judgment thereon. But on a return to a writ of *certiorari* no objection to the form of the order can be taken which is not specified in the rule: sec. 113.

A party making frivolous and vexatious statements of grounds of adjudication or of appeal, such party will be liable to pay the costs arising out of the same: sec. 114.

The losing party may be ordered to pay costs: sec. 115.

Officer of
parish or
union from
which
lunatic sent
to remove
and receive
him on
discharge.

Under sec. 80 of 16 & 17 Viet. c. 97, the visitors of an asylum may order the discharge of the lunatic, when their clerk will send notice thereof to the overseers of the parish wherein it may have adjudged the lunatic is settled; or if no such adjudication, to the overseers of the parish from which the lunatic had been sent to the asylum, unless such lunatic had been charged to the common fund of any union; and in such case the notice will be sent to the relieving officer. Upon receipt of such notice the overseers or relieving officer will be bound to remove the pauper from the asylum under a penalty of not exceeding £10, to be recovered as other penalties under the Act.

The overseers of the parish which had sent the lunatic to the asylum are bound to remove the lunatic after receipt of this notice from the visitors, although it may have been adjudged that such lunatic was "*not settled*" in this parish, and although he had not an ascertained settlement elsewhere, and are liable to a penalty for refusing or wilfully neglecting to remove such lunatic after due notice: *Liverpool (Overseers) v. The Lancaster JJ., Visitors to the County Asylum*, 36 L. J. 591.

The order. By sec. 107 of 16 & 17 Viet. c. 97, the overseers of a parish, or guardians of a union or parish, or clerk of the

peace of a county, obtaining an order adjudging the settlement of any lunatic to be in any parish, shall within a reasonable time thereafter send or deliver, by post or otherwise, to the overseers or guardians of the parish in which such lunatic is adjudged to be settled a copy or duplicate of such order, and also a statement in writing under their or his hands or hand, or under the hands of any three or more of the guardians stating the description and address of the overseers, guardians, or clerk of the peace obtaining such order, and the place of confinement of the lunatic; and setting forth the grounds of such adjudication, including the particulars of any settlement or settlements relied upon in support thereof; and on the hearing of any appeal against any such order, it shall not be lawful for the respondents to go into or give evidence of any other grounds in support of such order than those set forth in such statement.

Under this section the session have no power to amend the order where it is addressed to the overseers instead of to the guardians by substitution of one for the other: *R. v. Liverpool*, 29 L. J. M. C. 137.

But the mere omission of the addresses required by the section may be added by way of an amendment under 11 & 12 Vict. c. 31, s. 4: *R. v. Manchester*, 26 L. J. M. C. 1; 6 E. & B. 919.

Where the order is obtained by the guardians of a union on behalf of a township, the overseers thereof should sign the "grounds," &c.: *R. v. Heaton*, 28 L. J. M. C. 181.

Under secs. 58, 62 of 8 & 9 Vict. c. 126 (repealed), the adjudication on the settlement of the pauper may properly be made with the order for the payment of the costs of maintenance: *R. v. Tygrwhitt*, 17 L. J. M. C. 141.

Sec. 58 (*ib.*) empowered justices to adjudicate on the settlement of "any pauper lunatic confined, or ordered to be confined," in an asylum. An order for maintenance made after the pauper had been discharged from the asylum was held to be bad: *R. v. Wolverhampton*, 14 Q. B. 318; 19 L. J. M. C. 25. But see 16 & 17 Vict. c. 97, s. 97; *Bradford Union v. Wilts*, n. p. 348.

Where two or more parishes are united under Gilbert's Act, 22 Geo. 3, c. 83, the order under the above section must be made on the guardians of the particular parish, and not on the guardians of the union: *Leatham v. Bolton-le-Sands*, 35 L. J. M. C. 62, overruling *R. v. Bramley*, 31 L. J. M. C. 11; 1 B. & S. 732.

The order must be addressed to the board of guardians where

Order for maintenance and the settlement may be in one.

The order where Gilbert's Act.

a local Act has created the board: *R. v. Liverpool*, 29 L. J. M. C. 137. And see 7 & 8 Vict. c. 101, s. 28. As to the form of the order, and reference to venue, see *R. v. St. Maurice*, 16 Q. B. 908; 8 & 9 Vict. c. 126, ss. 58, 62. If the order be addressed to the guardians of the union and their clerks, and ordering the clerk to pay the expenses, that is a compliance with the section and an order on the guardians: *R. v. Crediton*, 27 L. J. M. C. 165.

Overseers
may sign
grounds of
adjudica-
tion, &c.

The overseers of a township are the proper persons to sign the statement of the grounds of adjudication and particulars of settlement under sec. 107, 16 & 17 Vict. c. 97. It was contended that the guardians should have signed as the *domini litis*, but Lord Campbell said the objection was most frivolous. And Erle, J., said the overseers clearly came within the words and intention of the section: *R. v. Heaton*, 28 L. J. M. C. 181, 183.

Persons aggrieved by a refusal of an order may appeal, s. 106.

LUNATIC CRIMINAL PAUPERS.

By 27 & 28 Vict. c. 29, s. 2, where a person becomes insane while a prisoner, his condition may be inquired into by two of the visiting justices, where such justices are appointed; or if he be in some other place of confinement the inquiry will be made by two justices (a) of the county, city, borough or place where the place of confinement is situate; and such visiting and other justices being assisted by two medical practitioners, and a certificate being made by them that the prisoner is insane, a secretary of state may order the prisoner's removal to the asylum.

And by 3 & 4 Vict. c. 54, s. 2, unless the secretary of state shall otherwise direct, two of the visiting justices, or any two justices of the county or place where the person is imprisoned, may inquire into "the personal legal disability of such insane person, the place of his last legal settlement, and the pecuniary circumstances of such person." Should it not appear that the prisoner has sufficient property to maintain him, and the place of his settlement is ascertained, the justices may

(a) The visiting justices are the proper persons to inquire into the settlement of the lunatic prisoner: *R. v. Lewes*, 41 L. J. M. C. 57, 176; L. R. 10 Q. B. 166, 579; and the visiting justices

may act though sitting in a borough possessing exclusive jurisdiction: *Bradford Union v. Wilts Clerk of the Peace*, 37 L. J. M. C. 129; L. R. 3 Q. B. 604; 9 B. & S. 660.

make an order on the overseers of the parish or guardians of the union in which the settlement is adjudged to pay the costs of the inquiry into the insanity of such person, and the conveying him to the asylum, and to pay such weekly sum as the justices direct for the maintenance of such person in the asylum. When the place of settlement cannot be ascertained the order will be made on the treasurer of the county, city, borough or place where such person shall have been imprisoned. If the person is possessed of property it will be applied towards the expense.

Order on treasurer of county, &c., where settlement not found.

The common fund of the union will be chargeable with the cost of the lunatic's maintenance, &c. : 27 & 28 Vict. c. 29, s. 5.

The Secretary of State had by warrant (under 3 & 4 Vict. c. 54), s. 2, placed a lunatic prisoner with the keeper of a private asylum ; the guardians of a union during thirteen years paid for the pauper's maintenance ; the Exchequer Chamber on appeal reversed the decision of the Court of Common Pleas, and held that no inference could be drawn either that there had been an order of justices, or that an arrangement had been made for the payment of the maintenance. *Pegge v. The Lampeter Union (Guardians)*, 41 L. J. C. P. 204 ; L. R. 7 C. P. 366 ; on appeal, 43 L. J. C. P. 181 ; L. R. 9 C. P. 373 ; *R. v. Oastler & Mew*, 50 L. J. M. C. C. A.

Order under Secretary of State's warrant.

This order, it would seem, could not be made to act retrospectively : *Bradford v. Wilts*, 37 L. J. M. C. 129 ; L. R. 3 Q. B. 604 ; but it was held under 16 & 17 Vict. c. 97, s. 96, that notwithstanding sec. 97, there was *no limit* to the retrospective character of such order, the guardians on whom it was made must pay under it in respect of any number of previous years' charges comprised in it.

After the expiration of the criminal's sentence the lunatic may be removed to a county asylum ; 30 Vict. c. 12, s. 5.

MANDAMUS.

The writ of mandamus is a high prerogative writ, to the aid of which the subject is entitled upon a proper case previously shown to the satisfaction of the Court of Queen's Bench, to which court it belongs exclusively, and is considered "as one of the *flowers* of that Court." *Tapping on Mandamus*, 5 ; 3 Bl. Com. 110.

The writ.

The writ will only be granted to prevent the failure of justice: *R. v. Norfolk JJ.*, 1 D. & R. 75; *R. v. Fowey* (Mayor), 2 B. & C. 584, Bac. Ab. Tit. "Mandamus." It will issue upon the assumption that that which ought to have been done at a time past has not been done: *R. v. Gloucester JJ.*, 6 N. & M. 117; *R. v. Leeds*, 4 T. R. 583; *R. v. Essex JJ.*, 4 B. & Ald. 276; *R. v. Suffolk JJ.*, 6 B. & C. 110.

The granting the writ is discretionary in the court: *R. v. All Saints, Wigan (Churchwardens)*, L. R. 9 Q. B. 317; 1 App. Cas. 611; 35 L. T. 381; 25 W. R. 128. The exercise of this right cannot be questioned; but the grant of a peremptory mandamus is a decision upon a right, declaring what is and what is not lawful to be done, and such decision is subject to review: *Id.*; *R. v. Peterborough (Mayor)*, 44 L. J. Q. B. 85; 23 W. R. 343.

Not granted
where
another
remedy.

Where there is another specific legal remedy the court will refuse to interfere by mandamus: *R. v. Windham*, Cowp. 378; *R. v. The Bank of England*, 2 Dougl. 524; *R. v. Bristol Docks*, 12 East, 429; *R. v. Ponsford*, 12 L. J. Q. B. 313; 1 D. & L. 116; *R. v. Bishop of Chester*, 1 T. R. 396. Where there is a remedy by appeal the court will not grant the writ; *Hutchins v. Chambers*, 1 Burr. 580; *R. v. Appleford*, 2 Keb. 864; *R. v. Cambridge*, 8 Mod. 150; S. C. Lord Raymond, 1334; *R. v. East India Co.*, 4 M. & S. 279; *R. v. Harrison*, 16 L. J. M. C. 33; *R. v. Lincolnshire*, 4 B. & C. 855; and see *R. v. Hull and Selby Ry. Co.*, 6 Q. B. 70; 13 L. J. M. C. 257; *R. v. St. Katherine's Docks*, 4 B. & Ad. 360. Or a right of redress in equity; *R. v. Marquis of Stafford*, 3 T. R. 646. But not so if only an indictment will also lie; *R. v. Severn*, 2 B. & A. 646; *Ex parte Robins*, 7 Dowl. P. C. 566.

Two circumstances must concur to authorise the issue of the mandamus; a specific legal right, and the absence of an effectual remedy. If the remedy be doubtful the writ will be granted; *R. v. The Nottingham Waterworks*, 1 N. & P. 480; but where the statute does not allow a removal of the proceedings by certiorari, the court will not indirectly bring them under review by mandamus; *R. v. Yorkshire JJ.*, 1 Ad. & E. 563; 3 Nev. & M. 802.

Granted
where
sessions
wrong
in law.

Where any preliminary step is necessary in order to give the sessions jurisdiction to hear an appeal, and they come to a wrong conclusion of law, not of fact, in respect to that preliminary step, the court will interfere by mandamus; per Pattison, J., in *R. v. Liverpool (Recorder)*, 20 L. J. M. C. 39 (see the cases *R. v. Goodrich*, 19 L. J. Q. B. 413, overruling

R. v. Cumberland, 4 A. & E., and other cases collected in Paley on Convictions, 4th ed. p. 66).

Where an inferior court declines to exercise a jurisdiction imposed on it by law, the Queen's Bench will enforce its proceeding by mandamus; when it has acted, its judgment can only be reversed in that court on a case stated for its opinion; *R. v. West Riding*, 1 N. S. Ca. 247. But the court will not interfere unless it be apparent that gross injustice will follow the refusal of the remedy; *R. v. Suffolk JJ.*, 6 M. & S. 58, per Lord Ellenborough; *R. v. Norfolk JJ.*, 5 B. & Ad. 992, per Lord Denman. See also *Curtis v. Buss*, 47 L. J. M. C. 35; 37 L. T. 533; S. C. *eo nom. Ex parte Curtis*, 3 Q. B. D. 13. The writ will not be granted to command justices to do an act which may render them liable to an action; *R. v. Buckinghamshire JJ.*, 9 D. & R. 689.

If the justices have exercised their discretion and decided the matter whether of law or fact in issue, the court will not, on mandamus, review their decision, however erroneous the decision may have been; *R. v. Bolton (Recorder)*, 18 L. J. M. C. 139; *R. v. Bingham*, 4 Q. B. 877; *R. v. Blanshard*, 13 Q. B. 318; 18 L. J. M. C. 110; *R. v. Kent JJ.*, 41 J. P. 263; and although the entry of the judgment may have been made under a mistake; *R. v. Leicestershire JJ.*, 1 M. & S. 442; *R. v. Monmouthshire JJ.*, 4 B. & C. 844; *R. v. Middlesex JJ.* (Slade's case), 2 Q. B. D. 516; 46 L. J. M. C. 225; 36 L. T. 402; 25 W. R. 610.

Should the sessions have only heard one side, and refused to hear the other, then the court would consider the case as not having been heard, and would grant the mandamus; *R. v. Gloucestershire JJ.*, 1 B. & Ad. 1; *R. v. Carnarvon JJ.*, 4 B. & Ald. 86; and see *R. v. Worcestershire JJ.*, 1 Chit. R. 649. But the court will not call the sessions to rehear a case, *ib.*

Where only one side heard.

Where a court of quarter sessions or justices in petty sessions refuse to entertain a complaint, &c., on the ground that they have no jurisdiction, mandamus will be granted calling on them to hear the case; *R. v. West Riding (Yorkshire)*, 1 N. S. C. 247; *R. v. Cumberland*, 3 M. & S. 192, 194; 4 A. & E. 695; *R. v. Kent*, 14 East, 395; see also *Luton Board of Health v. Davis*, 29 L. J. M. C. 173; 2 E. & E. 678. Where the justices declined to issue a distress warrant on nonpayment of the local rate, a mandamus issued commanding them to act; and see *R. v. Essex*, 36 L. T. R. 554.

Where a rate is bad *on the face of it*, the court will not grant a mandamus to justices to issue a summons against a

defaulter ; *R. v. Byron*, 12 Q. B. 321 ; 17 L. J. M. C. 134 ; *R. v. Wilkinson*, 3 N. S. Ca. 180. That objection would go to the primary jurisdiction of the justices, and the objection would be one involving a mere right of appeal ; *Hutchin v. Chambers*, 1 Burr. 580.

Where an
appeal has
been
entered.

Where the sessions have entered an appeal and respited it to a subsequent sessions, it cannot be objected at the subsequent sessions that no sufficient notice had been given, or that it had been improperly respited, and that they had no jurisdiction to hear the appeal ; on refusal to hear the appeal mandamus was granted, as the sessions having once received and adjourned the appeal they were bound to try it ; *R. v. Hertfordshire JJ.*, 4 B. & A. 561 ; *R. v. Wiltshire JJ.*, 8 B. & C. 380 ; but see *R. v. Oxfordshire JJ.*, 1 M. & S. 446. Where on an appeal against a conviction it was ascertained, at the subsequent sessions, that the appellant had not entered into the statutable recognizance, and without which they had no jurisdiction ; in that case the mandamus was refused. In the first two cases the session had a discretion to exercise in receiving the appeal ; in *R. v. Oxfordshire* they had not, it was in that instance a question of jurisdiction.

After a rate had been allowed it could be abandoned by the overseers on appeal ; and if the justices, acting on the abandonment, refused to receive the appeal, mandamus would be granted to try it ; *R. v. Cambridgeshire JJ.*, 2 Ad. & E. 373.

Where rule
of sessions
not justi-
fied.

Mandamus will be granted to hear an appeal where the sessions have refused to hear when acting under a rule of sessions not justified by the statute, or which is inconsistent therewith ; see *R. v. Norfolk JJ.*, 5 B. & Ad. 900 ; *R. v. Surrey JJ.*, 3 N. S. C. 531 ; *R. v. Pawlett*, L. R. 8 Q. B. 491 ; *R. v. Lincolnshire JJ.*, 3 B. & C. 548.

Not where
rule
reasonable.

But where a *reasonable* practice of sessions requires notice of appeal the court will not interfere ; *R. v. Salop JJ.*, 2 B. & A. 694 ; *R. v. Monmouthshire JJ.*, 3 Dowl. P. C. 306 ; *R. v. Montgomeryshire JJ.*, 2 N. S. Ca. 78 ; *R. v. Essex*, 2 Chit. 385.

What notice ought to be considered reasonable Lord Denman, C. J., held must depend on the *usual* practice of the sessions ; *R. v. Watts*, 7 A. & E. 470 ; see also *Re Blues*, 5 E. & B. 291 ; 24 L. J. M. C. 138. But of the reasonableness of the rule Lord Ellenborough claimed to exercise "a visitorial jurisdiction ;" *R. v. Wiltshire JJ.*, 10 East, 404. And Parke, J., in *Yorkshire W. R. JJ.*, 5 B. & Ad. 667, 671, said, "the sessions are the judges of what is

reasonable notice, *but not the sole* judges, and therefore this court may interfere with their decision upon it. They are by law to hear appeals only on *reasonable* notice of which we as well as they are judges. It is not correct to say this court sets its discretion against theirs ;” and the sessions were held to be wrong in requiring notice of the respite of the appeal.

In *R. v. Monmouthshire JJ.*, 1 Har. & W. 111 ; 3 Dowl. P. C. 306 ; upon an application for a mandamus to justices to enter continuances and hear an appeal where the sessions had declined to hear a case, fourteen days’ notice required by the rules of the sessions not having been given of the respiting the appeal, Pattison, J., held “that it was perfectly discretionary with the sessions as to what notices they would require in cases of respited appeals ; the notice did not seem to be illegal or so absurd as to require the court to overthrow it.” So also Wightman, J., in *R. v. Montgomeryshire JJ.*, 2 N. S. Ca. 78 ; 14 L. J. M. C. 142 ; 3 D. & L. 119 ; refused to interfere where he considered the rule, though unnecessary, yet not so unreasonable as to call for any interference by mandamus. On the other hand, in *R. v. Surrey*, 18 L. J. M. C. 175 ; 3 N. S. Ca. 531 ; on the sessions refusing to hear a respited appeal because an eight days’ notice of the entry and respite had not been given to the respondents, in accordance with a rule of sessions, Erle, J., held that the sessions *had no power* to make such a rule, adding a new condition to the right of appeal ; and as all the notices required by the general law had been given, he granted the mandamus commanding the sessions to enter continuances and hear the appeal ; see *R. v. Staffordshire JJ. (a)*, 5 B. & Ad. 990 ; *R. v. Pawlett*, L. R. 8 Q. B. 491 ; *R. v. Norfolk*, 5 B. & Ad. 999.

A rule requiring the order or conviction appealed against to be filed on the entry of the appeal, with the clerk of the peace on the first day of sessions, is inconsistent with 4 & 5 Will. 4, c. 76, s. 79, which requires the filing of the copy only ; and on which Coleridge, J., said, the sessions had no right to put such a condition on the appeal : *R. v. Yorkshire W. R. JJ.*, 2 Q. B. 705.

The rules of practice for sessions as to time, &c., must be precise and clear ; or otherwise upon a refusal to entertain an appeal grounded on the non-compliance with such rules,

Rules as to time must be precise, or writ may go.

(a) These cases were prior to the year (1849), in which *R. v. Baines’ Act*, 12 & 13 Vict. c. 45, *Surrey* was decided.

the court will grant a mandamus for a hearing: *R. v. Derbyshire*, 22 L. J. M. C. 31 B. C.

Q. S. decision on amendments final.

By 12 & 13 Vict. c. 45, s. 9, the decision of the Court of General or Quarter Sessions of the Peace upon the hearing of any appeal, as to the amending or refusing to amend any order or judgment of a justice or justices appealed against, will be final, and will not be liable to be reviewed in any court by means of a writ of certiorari or mandamus or otherwise. (Similar provisions as to orders of removal, 11 & 12 Vict. c. 31, s. 7, and lunacy orders, 16 & 17 Vict. c. 97, s. 116.)

On amendments made by the sessions, their decision is final; see *R. v. Ruyton of the Eleven Towns*, 30 L. J. M. C. 229; *R. v. Llangenny*, 32 L. J. M. C. 265.

So as to recognizances.

And by the same sec. 9, the decisions of the general or quarter sessions upon the hearing of any appeal as to the substitution of any new recognizance or recognizances as aforesaid shall be final, and shall not be liable to be reviewed in any court by means of a writ of certiorari or mandamus, or otherwise.

Adjournment discretionary.

Where the question of adjournment is discretionary with the sessions, and not determinable by any statute the court will not interfere: *R. v. Monmouthshire JJ.*, 1 B. & Ad. 895; *R. v. Staffordshire JJ.*, 2 Dowl. N. S. 353; *R. v. Eyre*, 26 L. J. M. C. 121; *Ex parte Becke*, 3 B. & Ad. 704; *R. v. Lancashire JJ.*, 3 N. S. C. 42; *R. v. Warwickshire*, 28 L. J. M. C. 249; *R. v. Skircoat*, *ib.* 224; *R. v. Sussex*, 34 L. J. M. C. 69.

Where sessions bound to grant costs.

In some instances the justices are bound by statute to grant the costs of an appeal, and upon refusal mandamus will issue to command the sessions to enter the continuances for the purpose of making their order for costs; as cost of appeal, "authorised and required," under the Highway Act, 1845, 5 & 6 Will. 4, c. 50, s. 90; *R. v. Yorkshire W. R.* 31 L. J. M. C. 271.

To issue process.

Mandamus will be granted to compel the sessions to issue process to enforce an order of the Court after unreasonable delay: *R. v. Warwickshire*, 2 A. & E. 768; 11 & 12 Vict. c. 44, s. 5.

As to proceedings in lieu of mandamus to justices out of sessions, see 11 & 12 Vict. c. 44, s. 5.

Application for the mandamus should be made in the first term: *R. v. Yorkshire W. R.* 1 G. & D. 706; *R. v. Richmond*, 27 L. J. M. C. 197.

When mandamus has issued to sessions to enter con-

tinuances, and hear an appeal, application for costs incurred in applying for and issuing the mandamus should be made within *two* terms after mandamus has been obeyed: *R. v. Kent JJ.*, 36 L. J. M. C. 130.

MARKETS AND FAIRS.

10 Vict. c. 14.

Before a market or fair can be opened for public use, the undertakers, that is, the persons authorized by a special Act to construct or regulate the market or fair, must give ten days' notice of the time when it will be opened in some newspaper, circulating within the limit of the special Act, and by handbills posted conspicuously within those limits; sec. 12. Notice of opening a market.

Appointment of days for holding the market; sec. 14.

After the market is opened for public use, any person, other than a licensed hawker, selling or exposing for sale within the prescribed limits, except in his own dwelling-house or shop, any article on which a toll is authorized to be taken in the market, will be liable to a penalty not exceeding 40s.; sec. 13. Selling without paying toll.

Exposing unwholesome meat or provisions in the market, renders the person liable to a penalty not exceeding £5 for each offence. And such unwholesome meat or provisions may be seized by the inspector; and every person hindering him in his duty, will be liable to a penalty of £5 for every such offence; sec. 15. Exposing for sale.

Every person obstructing a duly appointed person superintending the market or fair, and keeping order therein, will be liable to a penalty not exceeding 40s.; sec. 16. Obstructing officer.

Each vendor is bound on demand to weigh or measure every article sold by the weights and scales or measures provided by the undertakers; and the person appointed must weigh or measure such article, or either party may be liable to a penalty of not exceeding 40s.; secs. 22, 23. Vendor to weigh on sale.

Secs. 24—25 provide for the weighing of carts, under penalties of 20s., and against the frauds of the drivers, under penalties of £5; sec. 28. Against frauds by sellers or buyers in weighing, under penalty of £5 (*a*); sec. 29. Frauds

(*a*) See Weights and Measures Act, 1879.

by machine-keepers, under a like penalty; sec. 30. Frauds by other parties, under a like penalty.

Bye-laws.

Under sec. 42, the commissioners have power to make bye-laws, which, under sec. 44, if the allowance is not specially regulated by the special Act, will not come into force until allowed by the parties at quarter sessions, if the market be in England or Ireland, and in either case approved by the Local Government Board.

Appeal.

The appeal clauses of the Railway Clauses Consolidation Act, 1845, are incorporated with the Market and Fairs Act, and clauses with respect to the recovery of damages not specially provided for, and penalties; and in respect to the determination of any other matter referred to justices; sec. 52. See also *post*, sec. 32, Sum. Juris. Act, 1879, and observations thereon.

THE MERCHANT SHIPPING ACTS.

The Merchant Shipping Act, 1854, 17 & 18 Vict. c. 104, amended and consolidated the Acts relating to merchant shipping, under which (and also under the Merchant Shipping Acts) a large class of offences are provided against, and on a summary conviction therefor the party aggrieved will have his appeal to the quarter sessions under sec. 518, sub-sec. 4, Merchant Shipping Act, 1854.

Limit of time for prosecutions.

Sec. 525 Merchant Shipping Act, 1854, limits the time for instituting summary proceedings under the Act to six months after the commission of the offence; or, if both or either of the parties to such proceeding (see *Austin v. Olsen*, L. R. 3 Q. B. 208; 37 L. J. M. C. 34; 17 L. T. 537) be out of the kingdom during such time, the proceedings must be commenced within two months after they both happen to arrive, or be at one time within the kingdom (sub-sec. 1) (a); see *Austin v. Olsen*, L. R. 3 Q. B. 208; 37 L. J. M. C. 34.

Offences amounting to misdemeanour—penalty.

By sec. 518 (b), sub-sec. 2, every offence under the Act declared to be a misdemeanour shall be an offence punishable by imprisonment for any period not exceeding six months, with or without hard labour, or by a penalty not exceeding

(a) Sub-section 2 is a similar provision in reference to an offence committed in the British

possessions.

(b) Sub-section 1 provides for the payment of costs.

£100 ; and may be prosecuted in a summary manner instead of being prosecuted as a misdemeanour.

And by sub-sec. 3 the same may be prosecuted summarily before any two or more justices of the peace as to England, as directed by 11 & 12 Vict. c. 43 (*a*), the provisions in which Act are to be applicable to prosecutions under the Merchant Shipping Act.

By sub-sec. 4, in all cases of summary convictions in England where the sum adjudged to be paid exceeds (*b*) £5, or the period of imprisonment exceeds one month, any person who thinks himself aggrieved by such conviction may appeal to the next court of general or quarter sessions, holden not less than twelve days after the day of such conviction for the county, city, borough, liberty, riding, division, or place wherein the case has been tried, provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions ; and shall also either remain in custody until the sessions, or enter into his recognizance with two sufficient sureties before a justice of the peace conditioned to appear at the sessions, try the appeal, and abide the judgment of the court, upon which he will be discharged from custody. The sessions are to hear and determine the appeal and make such order therein, with or without costs, as to the court may seem meet ; and in case of the dismissal of the appeal, or the affirmation of the conviction, shall order and adjudge the offender to be punished *according to the conviction*, and to pay such costs as may be awarded, and shall, if necessary, issue process for enforcing such judgment. See also as to an election to appeal under the Summary Jurisdiction Act, 1879, *post*, Tit. Summary Jurisdiction Acts.

The following are the offences under the Merchant Shipping Acts ; they are necessarily referred to in a concise form. In each case the *extreme* penalty is stated, and must be understood as "*not exceeding*" the amount specified where a fine is imposed ; or not exceeding the time where a term of imprisonment is mentioned.

(*a*) See Merchant Shipping Act, 1855, 18 & 19 Vict. c. 119, s. 18 ; Merchant Shipping Act, 1862,

s. 65.

(*b*) See *ante*, p. 93.

Appeal where penalty exceeds £5 or imprisonment one month.

Offences.

Penalties.

PART I.

Under the Merchant Shipping Act of 1854:—

Super-
vision by
officials.

Sec. 13.—Any person refusing or neglecting to produce the official log-book of the ship when demanded by an authorised officer; or impeding the master of the crew; or knowingly misleading the officer authorised to ask an explanation regarding the ship; penalty, £20.

Sec. 41.—A shipbuilder wilfully making a false statement in a certificate; penalty, £100.

PART II.

Registry of
ships.

Sec. 45.—A master neglecting to register (a) change of ownership of a ship; penalty, £100.

Sec. 49.—A master neglecting to deliver up a provisional certificate granted in substitution of a lost certificate (sec. 44) within ten days after the first subsequent arrival of the ship at her port of discharge; penalty, £50.

Detaining
certificate.

Sec. 50.—Any person retaining possession of a ship's certificate, the same not being subject to any right of detention by reason of any title, lien, &c., and refusing on request to deliver it up to any registrar, officer of customs, or other person legally entitled to require such delivery, such person may on warrant be examined before a justice touching such refusal, and if no reasonable cause be shown for such detention; penalty, £100: if the certificate be lost, the party will be discharged: see *Arkle v. Henzell*, 27 L. J. M. C. 110; *Wiley v. Crawford*, 2 L. T. 597; affirmed in error, 4 L. T. 653. The master, whether co-owner or not, can have no lien on the certificate or ship's registry in case of a wrongful dismissal by the managing owners: *The St. Olaf*, 35 L. T. Adm. 428.

Using
improper
certificate.

Sec. 52.—The master or owner using an improper certificate, and one not legally granted for the use of the ship; a misdemeanour: see sec. 518, sub-s. 2.

Notice of

Sec. 53.—Where the certificate is actually or construc-

(a) As to the registration, see sec. 18; see also *The Andalusian*, 47 L. J. P. D. & A. 65; L. R. 3 P. D. 182.

As to name of ship, see Merchant Shipping Act, 1871, 34 & 35

Vict. c. 110, s. 6.

A ship built in order to be sold to a foreigner need not be registered: *Union Bank of London v. Lenanton*, 3 C. P. D. 243; 47 L. J. C. P. 409, C. A.

tively lost, or the ship ceases to be a British ship, immediate notice is to be given thereof to the registrar at the port of registry; every owner or master making default, penalty, £100.

Sec. 81, sub-s. 11.—If upon a sale made to an unqualified person without production of the certificate of sale to some registrar or consular officer (sub-s. 10), no title will be given on the sale; and the party on whose application the certificate was granted, and the persons exercising the power, will each incur a penalty of £100. Certificate of sale.

Sec. 103, sub-s. 2.—The master or owner carrying or permitting any papers to be carried on board a ship with intent to conceal her British character, or to assume a foreign character, or with intent to deceive; penalty, forfeiture of the ship to Her Majesty; and the master, if he commits or is privy to the offence, will be guilty of a misdemeanour; see *The Sceptre*, 35 L. T. Adm. 429; *The Annandale*, 46 L. J. Adm. 68; 2 Adm. D. 179; aff. on app. 47 L. J. Adm. 3; 2 Adm. D. 218; 37 L. T. 139. National character of ship.

Sub-s. 4.—A person making a false declaration of ownership; a misdemeanour: see also sec. 103 (a). Merchant Shipping Amendment Act, 1855, 18 & 19 Vict. c. 91, s. 9. Making false declaration of ownership.

Sec. 105.—Hoisting or assisting in hoisting unauthorised colours without warrant; penalty, £500. Using unauthorised colours.

Shipping Officers.

Sec. 127.—A shipping-master, his deputy, clerk or servant demanding or receiving any remuneration on the hiring of a seaman; penalty, £20. Hiring seamen.

Sec. 136.—No foreign-going ship or home trade passenger ship to go to sea without the master and mates are certified officers; and no ship of 100 tons burden or upwards shall go to sea without at least one certified officer besides the master; any master or mate going to sea without such certificate, or any person employing an uncertified master or mate; penalty, £50. Certificated officers to ship.

Sec. 140.—Making false representations to obtain a certificate; forging, altering, or fraudulently using or lending a certificate; a misdemeanour.

Sec. 143.—All indentures of apprenticeship to the sea-service are free of stamp-duty (a); and the person to whom Apprentices.

(a) See *R. v. Hamstall Ridgnare*, 3 T. R. 380; *R. v. Totness*, 11 Q. B. 80.

the boy is bound shall within seven days transmit the same to the registrar-general of seamen or to some shipping master to be recorded; provision is also made for recording the assignment of the indentures, cancellation, death, or desertion of the apprentice; failure to comply with this sec., penalty, £10.

Sec. 145.—The master of every foreign-going ship is to bring the apprentice and indenture before the shipping-master before whom the crew is engaged; in default, penalty, £5.

Sec. 147, sub-s. 1.—Persons engaging seamen or apprentices not being licensed (sec. 146) or duly authorised; penalty, £20. See *Hughes v. Sunderland*, 46 J. P. 6.

Sub-s. 2.—Employing unlicensed persons (except as in sub-s. 1) to engage crew; penalty, £20; and if licensed, forfeiture of license.

Sec. 148.—Any person receiving or demanding from any seaman seeking employment as a seaman or apprentice, other than lawful fees; penalty, £5.

Sec. 152.—Any master making a false statement by indorsement on a running agreement on its final termination; penalty, £20.

Sec. 157.—No master to carry to sea any seaman without an agreement; penalty, £5.

Sec. 158.—Notice to be given by the master of a foreign-going ship to the nearest shipping-master of any change in the crew; penalty, £5.

Sec. 160.—Seamen engaged in foreign ports are to be shipped with the sanction and in the presence of the consul; penalty, £20.

Sec. 161.—Sets out the rules to be observed as to the production of agreements and certificates of masters and mates of foreign-going ships; in default, penalty, £5.

Sec. 162.—Is the like as to home trade ships.

Sec. 164.—Every person who fraudulently falsifies an agreement, or delivers a false copy thereof, a misdemeanour. See sec. 518, sub-s. 2.

Sec. 166.—The master to post a copy of the agreement on a part of the ship accessible to the crew; penalty in default, £5.

Sec. 170.—The owner or master discharging seamen or paying their wages other than before a shipping master; penalty, £10. Seamen on a home trade ship may demand to have their wages paid in like manner.

Sec. 171.—The master to deliver an account of the

seaman's wages twenty-four hours before his discharge ; penalty, £5.

Sec. 172.—Upon the discharge of any seaman, the master is to sign his certificate of discharge ; in default, penalty, £10.

And such certificate retained by him shall be returned ; in default, penalty, £20.

Sec. 174.—Every shipping master may hear and decide questions between a master or owner and any of the crew, which both parties agree in writing to submit to him (*sec. 173*) ; and under *sec. 174* the owner or his agents are bound to produce the log-book or other ship-papers ; penalty on neglect, £5.

Sec. 176.—On a discharge of a seaman the master is to make a report of his conduct and qualifications to the registrar-general : any person making a false certificate, or fraudulently altering one ; a misdemeanour, see *sec. 518*, sub-s. 2. See *R. v. Wilson*, 27 L. J. M. C. 230.

Savings Banks for Seamen.

Sec. 180.—Savings' banks for seamen may be established ; and by 19 & 20 Vict. c. 41, s. 17, the enactment is to apply to seamen of the R. N.

Sec. 180g (a). (See Seaman's Savings Bank Act, 1856, *Forgery : to show right to deposit.* 19 & 20 Vict. c. 41, s. 6).—Every person who for the purpose of obtaining for himself or for another any money deposited in any savings' bank established under *this Act* (1856), or any interest thereon, forges or assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document purporting to show, or assist in showing a right to any such money or interest ; and every person who for the purpose aforesaid makes use of any such forged or altered document as aforesaid, or who for the purpose aforesaid gives or makes, or procures to be given or made, or assists in giving, or making, or procuring to be given or made, any false evidence or representation, knowing the same to be false ; penalty, as well being punishable with penal servitude, or imprisonment for two years (on indictment) : he may also be *summarily prosecuted*, and imprisoned,

(*a*) Sections 180 g. and 180 j. are introduced from the Seaman's Savings Bank Act, 1856.

with or without hard labour, for any period not exceeding six months.

Criminal procedure. *Sec. 180.*—All criminal proceedings under the Act (see 19 & 20 Vict. c. 41, s. 9) are to be conducted as those under the Merchant Shipping Act, 1854; and all evidence applicable under that Act will be applicable under *this* Act—the Seaman's Savings Banks Act, 1856, s. 9.

Master not accounting for money. *Sec. 196.*—Provides for the master taking charge of the money or effects of a seaman placed in his charge; penalty treble the value of the money and effects not accounted for; or if the value not ascertained, £50.

Forgery to obtain wages. *Sec. 203.*—Forging or altering a certificate, or making false representations, in order to obtain wages; penal servitude for four years; imprisonment, with or without hard labour, for two years; or on *summary conviction*, imprisonment six months, with or without hard labour.

Leaving apprentice on shore. *Sec. 206.*—A master or other person wrongfully leaving behind, or forcing on shore any seaman or apprentice engaged to return with the ship; guilty of a misdemeanour.

Sec. 207 (a).—The leaving a seaman or apprentice to be discharged abroad, or left behind without the master's certificate; a misdemeanour (see sec. 518; sub-sec. 2).

Sec. 209.—The master is to pay the wages of the seaman or apprentice left behind, and unable to proceed on the voyage; penalty, £20.

Receiving distressed seamen on board. *Sec. 212.*—Under certain circumstances (sec. 211) a person in charge of a ship is bound to receive on board distressed seamen for passage home (one for every fifty tons' burden); every person failing or refusing to receive on board his ship, or to give passage home, or subsistence to, or to provide for such seaman or apprentice; penalty, £100, with respect to each seaman or apprentice default is made.

Seaman leaving for Her Majesty's navy. *Sec. 214.*—Any seaman may leave his ship to *forthwith* enter Her Majesty's navy: no stipulation to the contrary is to be entered into the seaman's agreement; penalty, £20. (Leaving the ship to join Her Majesty's navy is not a desertion. See p. 363.)

Sec. 215.—The seaman's clothes and wages are to be given up on the seaman leaving his ship under sec. 214; penalty, £20 (the wages are to be paid to the officer authorized to receive such seaman into Her Majesty's service).

Sec. 220.—Every person making any false representation,

(a) As to seamen left in distress in this country, see 17 & 18 Vict. c. 120, s. 16.

or forging any document, or uttering it, to obtain payment of monies payable to seamen who have volunteered into Her Majesty's navy (see secs. 215—219); a misdemeanour: see sec. 518; sub-sec. 2.

Sec. 221.—On complaint of three or more of the crew, Water provision is made for a proper supply of water on board; supply. penalty on non-compliance, £20.

Sec. 225.—The master is to keep on board proper weights and measures for the serving out the provisions; penalty, Weights for provisions. £10.

Sec. 226.—No ship is to go to sea without the certificate of the inspector of medicines that the ship is properly provided; penalty on owner or master in consequence, £20. Certificate of medicines on board. The Merchant Shipping Act, 1864 (30 & 31 Vict. c. 127, s. 4), lime and lemon-juice, and other anti-scorbutics, are to be provided and kept on board a foreign-going ship; penalty on master or owner, £20. Merchant Shipping Act, 1854, s. 9, sufficient space is to be allowed for each man, and the space kept clear of cargo: the owner is responsible; Proper space for men. penalty, £20. (See the Colonial Shipping Act, 1868, 31 & 32 Vict. c. 129, s. 3.)

Sec. 230.—A foreign-going ship, carrying 100 passengers and upwards, is to carry a medical officer; penalty, £100. Medical officer.

Sec. 232.—The master is to permit a seaman or apprentice to leave the ship (in custody, or otherwise), to make complaint to a justice, consular officer, or officer in command of one of Her Majesty's ships, if he desires to make complaint against the master, or any of the crew. Complaints of crew to justice.

Protection of Seamen from Imposition.

Sec. 237.—Persons on board any ship not duly authorized, about to arrive, and before arrival at her destination, before her actual arrival in dock; penalty, £20: see *Attwood v. Cave*, 1 Q. B. D. 134. Under 43 & 44 Vict. c. 16, s. 5, the unauthorized person is restricted from being on board before the seamen lawfully leave the ship at the end of their engagement, or are discharged; penalty, £20, or imprisonment for six months. This section provides for their being warned off.

Discipline (a).

Sec. 239.—Any master, seaman, or apprentice, who by wilful breach or neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction or serious damage of the ship, or endangering the life or limb of any person belonging to or on board the ship; or who refuses or omits to do any lawful act proper and requisite to be done by him for preserving the ship from immediate loss, destruction, or serious damages, or for preserving any person belonging to or on board the ship from immediate danger to life or limb; a misdemeanour: see sec. 518, sub-sec. 2.

Sec. 242.—The Board of Trade may cancel the certificate of any master or mate (for cause); and should the master or mate make default in delivering the same to the Board, he will commit an offence with penalty, £50.

Desertion.

Sec. 243.—Any seaman or apprentice engaged to the sea-service committing any of the following offences may be summarily punished; but the section applies only to British ships: *Leary v. Lloyd*, 3 E. & B. 178.

1. Deserting the ship (*b*); imprisonment for twelve weeks, with or without hard labour, and forfeiture of clothes and effects left on board.
2. Neglecting or refusing without reasonable cause to join his ship, or absenting without leave within twenty-four hours before sailing from any port

(*a*) These sections have reference to British ships only: *Leary v. Lloyd*, 29 L. J. M. C. 194.

(*b*) A sailor who leaves his ship on account of cruelty on the part of the captain does not commit desertion: *Prince Edward v. Trerellick*, 24 L. J. Q. B. 9; 4 E. & B. 59; *Limland v. Stephens*, 3 Esp. 71. The seaman must leave the ship *sine animo revertendi*, and without just cause: *The Two Sisters*, 24 L. J. Q. B. 12; 2 W. Rob. 125. See

also *The Ealing Grove*, 2 Hagg. 15; *Button v. Thompson*, L. R. 4 C. P. 330; as to leaving the ship to join the R. N., see sec. 214. Want of provisions has been held to be a justification for leaving the ship: *The Castalia*, 1 Hagg. 59.

By a desertion the wages for the whole voyage which was not completed at the time of the desertion are forfeited; but not the wages for any other completed voyage: *The Pearle*, 5 Rob. Ad. 224.

- either at the commencement or during the voyage, or absenting at any time without leave and without sufficient cause from his ship or from his duty, not amounting to desertion, or not treated as such by his master. Imprisonment ten weeks, with or without hard labour; also at discretion of justices forfeiture of two days' pay; and for every twenty-four hours' absence either six days' pay, or any expenses in hiring a substitute (a).
3. Quitting ship without leave before the ship is secured; forfeiture of month's pay (b).
 4. Wilful disobedience to lawful commands; imprisonment four weeks, and with or without hard labour and forfeiture of two days' pay.
 5. Continued wilful disobedience to lawful commands; imprisonment twelve weeks, with or without hard labour; and (at the discretion of the Court) to forfeit for every twenty-four hours' continuance of disobedience or neglect either six days' pay, or the expenses of the hiring a substitute.
 6. Assaulting an officer; twelve weeks' imprisonment, with or without hard labour.
 7. Combining to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship, or the progress of the voyage; imprisonment twelve weeks, with or without hard labour.
 8. Wilfully damaging the ship, or embezzling or wilfully damaging any of her stores; forfeiture of wages equal to the amount of the loss sustained, and imprisonment for twelve weeks, with or without hard labour.
 9. For any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the master or owner; liability to reimburse the loss or damage, and wages retained in satisfaction or on account of such liability, without prejudice to further remedy (c).

* * * * *

(a) See provisions as to the ship being unseaworthy or overloaded when going to sea: Merchant Shipping Act, 1871. 34 & 35 Vict. c. 110, s. 9.

(b) See *Macdonald v. Jopling*, 4 M. & W. 225; *The Two Sisters*,

2 W. Rob. 123.

(c) See as to making false representations to obtain Savings Bank deposits, *infra*, "Savings Banks," p. 361, 19 & 20 Vict. c. 41, s. 6; and 14 & 15 Vict. c. 102, s. 55.

- Apprehen-
sion of de-
serter. *Sec. 246.*—The master or mate, owner, ship's husband or consignee, may apprehend deserters; but if such apprehension be made on improper or insufficient grounds (*a*), the party causing the apprehension will incur a penalty of £20 (the infliction of the penalty will be a bar to any action for false imprisonment in respect of such apprehension).
- Fine. *Sec. 256.*—Where a fine has been inflicted on a seaman by a master under his agreement, this section regulates the course of proceeding on the part of the master; the fine is to be deducted from the seaman's wages and paid over to the shipping-master by whom the crew is discharged; on neglect, penalty six times the amount of the fine retained.
- Enticing to
desert. *Sec. 257.*—Enticing a seaman or apprentice to desert; penalty, £10; wilfully harbouring the same; penalty, £20. The offence will be complete, although there had been an informality in the seaman's engagement: *Austin v. Olsen*, 37 L. J. M. C. 34; L. R. 3 Q. B. 208.
- Surrepti-
tious
passage. *Sec. 258.*—Any person obtaining a passage surreptitiously; penalty £20, or one month's imprisonment.
- Change of
masters. *Sec. 259.*—On a change of masters, the master is to hand to his successor all the ship's papers relating to the navigation and crew; penalty on default, £100.

Crimes on the High Seas and Abroad.

- Jurisdic-
tion. *Sec. 267.*—All offences committed against property or person in or at any place, either ashore or afloat, out of Her Majesty's dominions, by any master seaman or apprentice, who at the time, or within three months previously, had been employed in a British ship, will be liable to the same punishments, and be inquired into in the same way as if the same had been committed within the Admiralty jurisdiction; and all costs of the prosecution be allowed.
- Passage for
offenders. *Sec. 268 (b).*—A master, on request of the British consular officer, is to receive and afford a passage and subsistence to an offender and witnesses, and deliver the offender committed to his charge into the custody of the police on arrival of the ship in the United Kingdom or a British possession. On failure to comply with this section, penalty £50.

(*a*) A seaman may leave the ship if the ship is not in a fit condition to proceed to sea, or her accommodation is insufficient: 36 & 37 Vict. c. 85, s. 9;

as to a survey, see the Merchant Shipping Act, 1871, s. 7.

(*b*) See *Melville v. De Wolfe*, 4 Ell. & B. 844; 24 L. J. Q. B. 200.

Sec. 274.—Master to deliver the shipping lists (*sec. 273*) Shipping lists.
on arrival to the shipping-master; in default, penalty £5.

Sec. 274., providing for the registration of births and Registration of births and deaths at sea, is repealed by 37 & 38 Vict. c. 88, s. 54; *sec. 37* of that Act directs how the returns are to be made by the master or person having charge of the ship; failing to comply with those regulations, for each offence, penalty £5.

Sec. 275.—Ship's lists of a home-trade ship are to be Ship's lists.
delivered to a shipping-master twice a year; penalty, £5.

Sec. 276.—In case of a transfer of ownership, a ship ceasing to be a foreign-going or home-trading ship, the ship's lists are to be delivered to the ship-master of the port to which she may belong; on failure, penalty £10. So also, when practicable, and as soon as possible as regards a ship lost or abandoned, the master is to make the like return, and under a similar penalty.

Sec. 279.—On arrival in a foreign port, and remaining thereat forty-eight hours, the master is to deliver to the consular officer or officer of customs the agreement with the crew, indentures, and assignments of apprenticeships, and ship's documents; on default, penalty £20.

The Log-Book.

An official log-book is to be kept in a regulation form (*secs. 280, 282*).

Sec. 284.—The following are offences in respect to the official log-book:—

Sub-s. 1.—Not making the log-book as required; penalty, £5.

Sub-s. 2.—Making an entry in the log-book of an occurrence happening previously to the arrival of the ship at her final port of discharge more than twenty-four hours after arrival; penalty, £30.

Sub-s. 3.—Wilfully destroying, mutilating or rendering illegible any entry in any official log-book, or procuring or assisting in making any false or fraudulent entry or omission in such log-book, a misdemeanour; see *sec. 518*, sub-s. 2.

Sec. 285.—Entries in the official log-book are to be received in evidence in any proceeding in any court of justice, subject to just exceptions. And the log-book is to be delivered to the shipping-master on the discharge of the crew (see *sec. 286*).

Sec. 287.—In case of the transfer of the ship or change of

employment, or loss or abandonment of a ship (as *ante*, sec. 276), the log-book is to be delivered or transmitted to the shipping master of the port to which the ship belongs ; in default, penalty £10.

Safety (a) and Prevention of Accidents.

Sec. 291.—(Merchant Shipping Act, 1871, s. 5); and see also Merchant Shipping Act, 1873, 36 & 37 Vict. c. 85, s. 4, directs the master to permit an authorised person to take measurements to record the draught of a vessel (*b*); any master failing so to do ; penalty £5.

Sec. 292 gives rules to be observed as to the providing boats and life buoys (see Merchant Shipping Act, 1873, s. 15); and by

Sec. 293.—If the owner appears to be in fault where proper provision is not made in providing the requisite boats and life buoys, and maintaining them ready for use, he will incur a penalty of £100 ; and if the master, £50 (see Merchant Shipping Act, 1873, s. 15).

Sec. 301.—Provides for the proper equipment of steam ships, and on any steam ship going to sea without being so provided, the owner (if in fault) will incur a penalty of £100 ; and the master (if in fault) £50 (see Merchant Shipping Act, 1876, s. 21).

Sec. 302. Any person overweighting the safety valve of any steam ship, or beyond the limits fixed by the engineer surveyor ; penalty £100, with any liabilities he may incur by so doing.

Sec. 306.—Hindering a surveyor on his inspection of the ship ; penalty £5.

Sec. 308.—Penalty on surveyor's receiving fees unlawfully, £50 ; see Merchant Shipping Act, 1876, s. 39.

Sec. 315.—No certificate is to be used after its expiration (without reasonable cause) ; penalty £10.

Sec. 317.—The certificate is to be exhibited in a conspicuous part of the ship ; penalty £10.

Sec. 318.—No passenger steamer (*c*) to proceed on her voyage without the certificate ; penalty £20 ; see sec. 44 *et seq.*

(*a*) Regulations as to lights and signals, and penalties on neglecting them, see 25 & 26 Vict. c. 63, ss. 25—28.

(*b*) See also the Merchant Shipping Act, 1873, s. 3 (36 & 37 Vict. c. 85). The measurements are to be painted on some part of the ship

as may be directed by the Board of Trade ; but if the scale is inaccurate and likely to mislead, the owner of the ship will incur a penalty of £100.

(*c*) Carrying more than 12 passengers. Merchant Shipping Act, 1876, s. 16.

Sec. 319.—Having on board a passenger steamer a greater number of passengers than allowed by the certificate; the owner or master will incur a penalty of £20; and also in addition 5s. for every passenger over and above the number allowed, or, if the fare of any on board exceeds 5s., not exceeding double the amount of the fares of all the passengers who are over and above the number so allowed, such fares to be calculated at the highest rate of fare payable by any passenger on board.

Sec. 320.—Forging or altering a certificate under the fourth part of the Act,—a misdemeanour; see sec. 518, sub-s. 2.

Sec. 321.—The owner, master, or engineer, wilfully refusing or neglecting to give information of the build of the steam ship to the inspecting surveyor; penalty £5.

Passengers.

Sec. 323 is repealed by the Merchant Shipping Act, 1862, 25 & 26 Vict. c. 63, s. 2; and by the 35th sec. of that Act various provisions are enacted for the proper conduct of the passengers with minor penalties; and by sec. 36, any person on board a steamer wilfully damaging the machinery, or obstructing, impeding, or molesting the crew in the execution of their duty; for every such offence, penalty £20; and by sec. 37, the master or other officer of any duly surveyed passenger steamer may arrest such offender: see Merchant Shipping Act, 1862, s. 37.

Sec. 324.—Any person having committed any offence under the two preceding sections refusing to give his name and address; penalty £20, to be paid to the owner.

Accidents.

Sec. 326.—Accidents to a steam ship, occasioning loss of life, or serious injury to any person, or material damage affecting her seaworthiness or efficiency, either in her hull or machinery, are to be reported to the Board of Trade within twenty-four hours, or as soon thereafter as possible; on neglect by master or owner, penalty £50.

Sec. 327 is repealed by Merchant Shipping Act, 1873, s. 33; and by sec. 22 of that Act, the managing owner, or ship's husband where there is no managing owner, is to give notice to the Board of Trade as soon as conveniently may be of the apprehended loss of any British ship.

Naval Courts.

Sec. 266.—Proceedings under naval courts are to be reported to the Board of Trade under sec. 265 ; any person wilfully preventing or obstructing the making such report, for each offence, penalty £50, or twelve months' imprisonment with hard labour.

Sec. 328.—*All collisions to be entered on the log ;* penalty £20.

Carrying Dangerous Goods.

Sec. 329, providing against the carrying dangerous goods, is repealed by Merchant Shipping Act, 1873, s. 33 ; and by sec. 23 of that Act, the carrying of dangerous goods is restricted under a penalty of £100 ; but if the party shows he was only acting as agent, and was not aware, and did not suspect, and had no reason to suspect, that the goods shipped by him were of a dangerous nature, the penalty will not exceed £10.

Pilot-Boats.

Sec. 346.—Every pilot-boat is to be distinguished by characteristics enumerated in this section ; in default, penalty £20 for each default.

Sec. 347.—Pilot is to exhibit his flag when in boat not a pilot-boat ; penalty £50.

Sec. 348.—A ship not having a licensed pilot on board, displaying a flag as a qualified pilot's flag ; penalty £50, to be recovered of the owner or master.

Sec. 350.—Pilot to keep and produce pilot regulations : penalty £50.

Sec. 351.—Pilot to produce licence ; penalty £10.

Compulsory Pilotage.

Sec. 353.—A master of any unexempted ship (sec. 379), in a district where the employment of licensed pilots is compulsory, navigating his ship after a licensed pilot has offered to take charge thereof, or has made signal for that purpose, and without having a pilotage certificate enabling him so to do ; or employs or continues to employ an unqualified person (sec. 361) to pilot her ; for any such offence, penalty, double the amount of pilotage demandable for the conduct of the ship.

Sec. 376.—Penalty on masters of ships employing unlicensed pilots, or acting as pilots; penalty, £5 for every 50 tons' burden of the ship.

Sec. 379.—Exemptions.

1. Coasting vessels in the United Kingdom (*a*).
2. Ships not over 60 tons.
3. Ships trading to Boulogne, or to any place in Europe north of Boulogne.
4. Ships laden with stone from the Channel Islands.
5. Ships navigating within the limit of the port to which they belong.
6. Ships passing through the limits of any pilotage district, not being bound to any place within the district.

Sec. 354.—Home-trade passenger ships are to employ qualified pilots, unless they have certificated masters or mates; on failing, penalty £100; see *The Lion*, L. R. 2 C. P. 525; *The Temora*, Lush. 17; *The General Steam Navigation Co. v. The London & Edinburgh Shipping Co.*, 2 Ex. D. 467. As to the granting the certificates, see *sec. 355*; and see *Hossack v. Gray*, 34 L. J. M. C. 209; 12 L. T. 701.

Sec. 358.—A qualified pilot receiving, or a master offering a pilot an unauthorised rate of pilotage, whether greater or less (*b*); penalty £10.

Sec. 359.—Making a false declaration to a pilot of the draught of the ship; penalty £10.

Offences by Pilots.

Sec. 361.—An unqualified pilot acting as pilot; penalty £50.

Sec. 365.—A qualified pilot being:

1. Interested in a public-house, or in the sale of wine and spirituous liquors, tobacco or tea;
2. Or who commits a fraud on the customs excise laws;
3. Or is guilty of corrupt practices in reference to ships;
4. Or lends his licence;
5. Or acts as pilot while suspended;

(*a*) A foreign going vessel casually employed in taking a cargo between London and Liverpool is not within this exception: *The Lloyds*, 32 L. J. Adm. 197.

(*b*) The pilot may charge for other than pilotage services: see *The Hebe*, 2 W. Rob. 246; *The General Palmer*, 2 Hagg. 176.

6. Or when intoxicated ;
7. Or unnecessarily causes expense of pilotage ;
8. Or refuses or wilfully delays to take charge of any ship (unless prevented by illness or other reasonable cause) (a).
9. Or unnecessarily cuts or slips the cable ;
10. Or refuses to conduct the ship into port, except on reasonable ground of danger to the ship ;
11. Or quits the ship before his service is performed, without the consent of the master ;—

besides any liability in an action for damages ; penalty, £100, and suspension or dismissal by the pilotage authority : any person who procures, abets, or connives at such offence, the like liabilities.

Sec. 366.—If the pilot by a wilful breach of duty, or under drunkenness, does any act tending to the immediate loss, destruction, or serious damage of the ship, or to the endangering the life or limb of any person on board the ship, or refuses or omits to do any act for the preserving the ship from damage, &c., or life or limb, he will be deemed guilty of a misdemeanour (see sec. 518, *ante*, p. 356), and liable to suspension or dismissal.

Sec. 367.—A pilot doing wilful injury to a ship while in charge ; penalty, £100 ; suspension or dismissal, as well as liable for damages.

Damage to Lights, Buoys, &c.

Sec. 414.—Wilfully injuring any lights, buoys, or beacons ; penalty, £50, and the expense of making good the damage.

Sec. 415.—Exhibiting false lights ; penalty, £100.

Wrecks (b).

Sec. 441. Disobeying the directions of the receiver of the district as to stranded vessel, or the saving of lives belonging thereto ; penalty, £50.

Sec. 442.—The receiver may summon such men as he may deem right to assist him at any such wreck, and require the master to assist, and demand the use of waggons, &c. Any person refusing to comply with the receiver's request ; penalty, £100.

(a) See *The Frederickton*, 1 W. Rob. 16.

(b) See *post*, tit. "Wreck."

Sec. 443.—Articles washed ashore, or taken from a wrecked vessel, are to be delivered to the receiver ; penalty, £100 (*a*).

Sec. 447.—Under *sec. 446* power is given, in case of a ship being in distress, to take carriages, &c., over lands adjoining to render assistance, and by this section any owner or occupier of such land hindering or preventing such passage of carriages, &c., or the deposit of the cargo of the ship on his land, will incur a penalty of £100.

Sec. 450.—Any person finding or taking possession of a wreck, and not giving notice to the receiver : penalty, £100. See *The Zeta*, L. R. 4 Adm. & Ecc. 460, where a barge drifting in the Thames was not held to be a wreck. As to the meaning of “wreck,” see *Barry v. Anaud*, 10 A. & E. 646 ; *Palmer v. Rouse*, 3 H. & N. 503 ; 27 L. J. Ex. 437, where a raft of timber was held not to be “the subject of a wreck.”

Sec. 478.—Persons plundering a wreck, obstructing the saving wrecked property, secreting the same, or endeavouring to board the wreck without leave of the master ; penalty, £50. The master may repel by force ; and see 24 & 25 Vict. c. 96, ss. 65, 66 ; 24 & 25 Vict. c. 100, ss. 17, 37.

Dealers in Marine Stores.

Sec. 480.—Every dealer in marine stores of any description (the class of which is there enumerated) is to have his name, with the words “dealer in marine stores,” painted over his warehouse, under penalty of £20.

He is to keep books in which he is to keep an account of all transactions in reference to marine stores done by him ; penalty, first offence, £20 ; every subsequent offence, £50.

He shall not purchase marine stores from any person under apparently 16 years of age ; penalty, £5 for the first offence ; every subsequent offence, £50.

He is not to cut up any cable, or similar article exceeding five fathoms in length, or unlay the same into twine or paper stuff, on any pretence whatever, without a permit of a justice (*sec. 481*), or advertising a notice thereof (*sec. 482*) ; penalty, first offence, £20 ; every subsequent offence, £10.

Sec. 482.—Before any cable or other like article can be cut up or unlaid by any marine store dealer, he must for one week have published in some newspaper published nearest the place where he resides, one or more advertisements of his having obtained a justice's permit to do so, and

(a) The receiver has full power to suppress plunder, *sec. 441*.

state the place where the same is deposited, and the time when it is to be cut up. Any person suspecting the cable to be his may obtain a warrant for inspection, and he may require production of the cable or other like article mentioned in the permit, and his books kept as a marine store dealer: on his default to comply with this section; penalty, first offence, £20; every subsequent offence, £50.

Sec. 483.—Anchors are to be marked by the manufacturers; penalty, £5.

MUNICIPAL CORPORATION ACTS.

Appeal
against a
borough
rate.

Any person who may think himself aggrieved by any borough rate, may appeal to the recorder at the next quarter sessions for the borough in which such rate has been made; or in case of *no recorder* for the borough, to the justices at the next court of quarter sessions for the county within which such borough is situate, or whereunto it is adjacent; and such recorder or justices shall have power to hear and determine the same, and to award relief in the premises as in the case of any appeal against any county rate: 5 & 6 Will. 4, c. 76, s. 92.

The power in the council to make a borough rate is that which the justices have in quarter sessions to make a county rate under 55 Geo. 3, c. 51, and it has been held that the appeal under sec. 92 is limited to such cases as would be within the 55 Geo. 3, c. 51: *R. v. the Recorder of Bath*, 9 A. & E. 871; *R. v. Westmorland*, 10 B. & C. 226; see Rawlinson's Corporation Acts by Geary, 7th ed., 134.

As to stating grounds of appeal, see 15 & 16 Vict. c. 81, ss. 17, 22, relating to appeals against county rates. The notice should be served on the town clerk: *R. v. Carmarthen*, 7 A. & E. 756; S. C., 3 N. & P. 19.

Offences
under local
Acts.

Offences against the provisions of local Acts will be cognizable by the justices of the borough; 7 & 8 Will. 4 and 1 Vict. c. 78, s. 31.

Limit of
prose-
cution.

All prosecutions of offences punishable under the Municipal Corporation Act must be commenced within three calendar months after the commission of the offence. And if upon summons the party shall not appear, the case may be proceeded with in his absence: 4 & 5 Will. 4, c. 76, s. 127.

When any person is aggrieved by any summary conviction under the Municipal Corporation Acts, he may appeal to the next court of quarter sessions holden not less than twelve days after such conviction for the county or for the borough wherein the cause of complaint shall have arisen, provided that such person give to the complainant a notice in writing of such appeal, and of the cause or matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, or enter into a recognizance in manner described by the Act to appear and try such appeal, abide judgment, and pay costs; and the Court is to hear and determine the matter of the appeal and make such order, with or without costs, as to the Court shall seem meet; and on the dismissal of the appeal to order the offender to be dealt with and punished *according to the conviction (a)*, and to pay such costs as may be awarded, and may issue process for enforcing the judgment: 5 & 6 Will. 4, c. 76, s. 131.

By sec. 132, the writ of *certiorari* is taken away: see *R. v. Chantrell*, L. R. 10 Q. B. 587; 44 L. J. M. C. 94; 32 L. T. 350; *R. v. Turret*, 2 T. R. 735. But see now sec. 40, Summary Jurisdiction Act, 1879.

As to the election to appeal under the Summary Jurisdiction Act, 1879, see sec. 32 (*ib.*), *post*.

PAWNBROKERS.

The principal Act relating to pawnbrokers is "The Pawn-brokers' Act, 1872," 35 & 36 Vict. c. 93.

This Act applies only as between the pawnbroker and the pawnee, or the owner who has authorised a pledge; the common law rights of the owner of the property, pledged against his wish, are in no way interfered with or extinguished: see *The Singer Manufacturing Co. v. Clark*, 5 Ex. D. 37; 49 L. J. Ex. 224.

By the 6th sec., in order to prevent evasion of the provisions of the Act, it is enacted that the following persons shall be deemed to be persons carrying on the business of taking goods and chattels in pawn: every person who keeps

The Pawn-brokers' Act, 1872.
Limited operation of the Act.

Who deemed to carry on the business of pawn-broker.

(a) See tit. "Sum. Juris. Acts," 1879, sub-sec. 5, s. 31; and sec. 32, *post*.

a shop for the purchase or sale of goods or chattels, or for taking in goods or chattels by way of security for money advanced thereon, or who purchases or receives, or takes in goods or chattels, and pays, or advances, or lends thereon any sum of money not exceeding £10, with or under an agreement or understanding express or implied, or to be from the nature or character of the dealing reasonably inferred, that those goods or chattels may be afterwards redeemed or repurchased on any terms; and every such transaction, article, payment, advance, and loan, shall be deemed a pawning, &c., within the Act.

Sec. 7 exempts executors and administrators of pawnbrokers from personal penalties, unless incurred by his own acts.

Sec. 8 renders the act of the servant that of the principal. Offences. The following are offences under the Act, on the conviction for which the party will be liable to a penalty not exceeding £10, under sec. 45, and have his right of appeal, as under sec. 52, *post*.

1. The pawnbroker not keeping proper books; sec. 12.
2. Not keeping his name exhibited in large characters over his door, with the word "Pawnbroker;" sec. 13.
3. A pawnbroker not giving, or the pawnee not taking a pawn-ticket on a pledge; sec. 14.
4. A pawnbroker taking too great a profit; sec. 15 (sch. 4).
5. A pawnbroker not giving a receipt on redemption of a loan; sec. 15.
6. An auctioneer doing any act in contravention of his duty under the Act; sec. 20.

On pledge
above 10s.

As to pledges above 10s. :—

1. A pawnbroker, not *bonâ fide*, according to the Act, selling a pledge pawned with him.
2. Entering in his book a pawn as sold for less than it was sold, or failing to enter it.
3. Refusing to permit any authorised person to inspect his books; or inspection of a filled-up catalogue of auction.
4. Failing to produce such catalogue.
5. Refusing to pay on demand the surplus on sale to the person entitled to receive the same; sec. 23. (The forfeiture for the offences under this section, not exceeding £10, will be to the party aggrieved.)

As to the general restrictions :—

General re-
strictions.

A pawnbroker doing any of the following things will be guilty of an offence :

1. Taking any article in pawn of a person appearing to be under twelve years of age, or to be intoxicated.

2. Purchases or takes in pawn or exchange a pawn-ticket issued by another pawnbroker.

3. Employs any person under sixteen to take in pledges.

4. Carries on business on holy days.

5. Under any pretence purchases, except at public auction, any pledge while in pawn with him.

6. Suffers any pledge while in pawn with him to be redeemed with a view to his purchasing it.

7. Makes any contract or agreement with any person pawning, or offering to pawn any article, or with the owner thereof for the purchase, sale, or disposition thereof within the time of redemption.

8. Sells or disposes of any pledge pawned with him except as authorized ; sec. 32.

Unlawful pawning.

Unlawful

The following will be offences, if any person does any of the following things :—

pawning.

1. Offers to a pawnbroker an article by way of pawn, being unable, or refusing to give a satisfactory account of the means by which he became possessed thereof.

2. Wilfully gives false information to the pawnbroker as to the ownership of the property ; or of his own name and address ; or as to the name and address of the owner of the article.

3. Attempts to redeem a pledge, without being entitled thereto ; sec. 34.

Sec. 35 prohibits the taking in pawn linen, apparel, or unfinished goods or materials entrusted to wash, &c., mend, work up, &c. And sec. 36 authorizes the issue of a search warrant for searching for such articles ; and any pawnbroker opposing or hindering any constable in the search will be guilty of an offence under the Act.

A pawnbroker must, at any time, when ordered by a court of summary jurisdiction, attend before the court, and produce all books and papers relating to his business, which he is

required by the court to produce ; and failing to do so, will be guilty of an offence against the Act (*a*) ; sec. 50.

Penalties. A pawnbroker, or any other person guilty of an offence against the Act, in respect whereof a specific forfeiture or penalty is not prescribed by the Act, will be liable on conviction by a court of summary jurisdiction to a penalty not exceeding £10 ; sec. 45.

Appeal. Any person who thinks himself aggrieved by any conviction or order of a court of summary jurisdiction under the Act, or by the refusal of a certificate for a licence (*b*), may appeal therefrom, subject to the following conditions and regulations (sec. 52) :—

1. The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, held not less than fifteen days, and (unless adjourned by the court) not more than four months after the decision or refusal appealed from.

2. The appellant shall within *seven* days after the cause of appeal has arisen, give notice to the other party, and to *the court* (*c*), or authority appealed from, of his intention to appeal and the grounds thereof.

3. Immediately after such notice, he will enter into his recognizance with two sufficient sureties to try his appeal, abide the judgment of the court, and pay costs, or give security by deposit of money, &c.

4. On recognizance appellant to be discharged if in custody.

5. The court of appeal may adjourn the appeal ; confirm, reverse, or modify the decision or refusal appealed from, or remit the matter, with the opinion of the court of appeal thereon, or make such order as to costs to be paid by either party as the court thinks just. See sec. 31, 32 ; Summary Jurisdiction Act, 1879 (*infra*) ; giving the right of appeal under that Act on the election of the appellant.

(*a*) Contracts will not be void by reason of the pawnbroker's "offence," sec. 51.

(*b*) See sec. 40.

(*c*) See *Curtis v. Buss*, 8 C., *In re Curtis*, 47 L. J. M. C. 35 ; 3 Q. B. D. 13, *infra*, pp. 72, 133.

THE POOR-RATE.

The foundation for the raising public funds for the relief of the poor is the Statute 43 Eliz. c. 2, which was passed to enforce the duties of the imperfect obligations to support the necessitous by raising a fund from those who were deemed competent to pay. Lord Kenyon, *R. v. White and others*, 4 T. R. 775. Founda-
tion of the
poor-rate.

The words "poor-rate" are defined, by 4 & 5 Will. 4, c. 76, s. 109, "to include any rate, rate in aid, mullet, cess, assessment, collection, levy, ley, subscription, or contribution raised, assessed, imposed, levied, collected, or disbursed for the relief of the poor in any parish or union." Definition
of poor-
rate.

"The poor's-rate," said Lord Mansfield, in *Rowles v. Gells*, 2 Cowp. 452, "is not a tax *on land*, but a *personal charge* in respect of the land." The landlord is never assessed for his rent, for that would be a double assessment, as the lessee had paid before. See *Theed v. Starkey*, 8 Mod. 314 (a). Not a tax
in respect
of the land.

By 43 Eliz. c. 2, s. 1, the churchwardens and overseers are directed to make a poor-rate "by taxation of every inhabitant, parson, vicar, and others, and of every occupier of lands, houses, tithes, impropriate, appropriation of tithes, coal mines, or saleable underwood in the said parish." The rate a
tax on in-
habitants.

The Rating Act, 1874, extends the rating to *all* mines (see *post*, "Mines"), and amends the mode of rating underwoods (see *post*, "Underwoods"), and makes the right of sporting rateable (see *post*, "Sporting"). Extension
of 43 Eliz.
c. 2, by
Rating Act,
1874.

A parish may be divided for civil and also for ecclesiastical purposes; as where a hamlet or township once extended into two parishes, and afterwards became annexed to the one for ecclesiastical purposes, but continued as part of the other for civil purposes; a usage to rate land in one part to the poor-rate of another part, if it be impossible to say that the usage might not have had a legal origin, is good; the tithes Parish
divided for
rating and
ecclesiasti-
cal pur-
poses.

(a) A general covenant to pay "all taxes" would include the poor-rate: *Mitchell v. Fordham*, 6 B. & C. 274: although it was decided in *Theed v. Starkey* (*supra*) that all "taxes on land" did not include the poor-rate, it being a rate on the occupier.

See also *R. v. Issey*, Burr. 826; *Chatfield v. Ruston*, 3 ib. 863; *R. v. Ringstead*, 7 ib. 607; *R. v. Shaw*, 12 Q. B. 419; 17 L. J. M. C. 130; *R. v. Teignmouth*, 1 B. & Ad. 244; *R. v. Everton*, 29 L. J. M. C. 165.

might have been severed while the hamlet remained as one for rating purposes, according to 13 & 14 Car. 2, c. 12; *R. v. Watson*, L. R. 3 Q. B. 762; 37 L. J. M. C. 153; 18 L. T. 556. See also "The Divided Parishes Act, 1876," 39 & 40 Vict. c. 61, under which a part of a parish may become annexed for all purposes to an adjoining parish.

Whether two places are separate and distinct parishes is a question of evidence: *R. v. Tomblason*, 27 J. P. 150; *R. v. Sharpley*, 23 L. T. 172; 24 L. J. Q. B. 62; S. C., *Sharpley v. Mablethorpe*, 24 L. J. M. C. 35; 3 E. & B. 906; see also *R. v. Clayton*, 18 L. J. M. C. 129, decided on the construction of 13 & 14 Car. 2, c. 12, s. 21; *Lane v. Cobham*, 7 East, 1.

Parish in
two divi-
sions.

Where a parish is divided into two divisions having separate overseers and separate rates, but at the end of the year there is a mutual accounting as to the balance remaining in the hands of each set of overseers, they are joint overseers having one joint account: *Malkin v. Vickerstaff*, 3 B. & Ald. 89.

Parish in
two or
more juris-
dictions.

Where a parish lies in two or more counties, or part within the liberty of a city or town corporate and part without, then the overseers will be nominated by the justices for the respective authorities, and such overseers will act together for the whole parish: *R. v. Butler*, 1 Bott. 16, 43 Eliz. c. 2, s. 9. And where the boundary of the borough is not coextensive with the parish, a separate rate cannot be made for the part within the borough, and another for that without, although made on an alleged custom existing since 43 Eliz. c. 2. Such custom has been held to be bad: *R. v. Gordon*, 1 B. & Ald. 524.

Where a parish comprised in a union is subdivided, or added to a union after the valuation lists have been approved, the contributions to the common fund will continue to be made according to the Union Assessment Act, 1862 (25 & 26 Vict. c. 103, s. 30), and the Poor Law Board will determine the proportion the parish so added shall make in contribution: 30 & 31 Vict. c. 106, s. 15.

Extra-
parochial
places.

By 20 Vict. c. 19, s. 1, every place entered on the registrar-general's report as, or which is reputed to be, extra parochial, and wherein no rate is levied for the relief of the poor, will, for the purposes of the assessment to the poor-rate, be deemed a parish for such purposes. See *Mytton v. Thornbury*, 29 L. J. M. C. 109. But where there was no church or chapel in such extra-parochial "parish," on which to publish the poor-rate, under 7 Will. 4, and 1 Vict. c. 45,

s. 2, no such rate could be levied: *R. v. Dyott* (a), 9 Q. B. D. 47; see also *R. v. Marriot*, 12 A. & E. 779; *R. v. Whipp*, 11 L. J. M. C. 64; 7 Jur. 193; *R. v. Newcombe*, 4 T. R. 368; *Bennett v. Edwards*, 7 B. & C. 586; *Paynter v. R.*, 16 L. J. M. C. 137. But see now 45 & 46 Vict. c. 20, s. 4.

For the preservation of the bounds of the parish by tradition, the ancient custom of "beating the bounds" is notorious, and has been confirmed by high judicial authority. See Anderson, C.J., in *Goodday v. Mitchell*, Cro. Eliz. 441; 71 Co. Ent. 650 b., 651 b., Trespass, pl. 5; Lord Denman, C.J., in *Taylor v. Devey*, 7 A. & E. 409; see also *McCannon v. Sinclair*, 28 L. J. M. C. 247; 2 E. & E. 50; Hale, *de jure maris*, 27.

Primâ facie, the sea-shore is extra-parochial: *R. v. Musson*, 8 E. & B. 900; 27 L. J. M. C. 100. So an estuary, or arm of the sea, is extra-parochial; but this may be rebutted, even as to the perambulations: *The Ipswich Docks Commissioners v. The Overseers of Ipswich*, 7 B. & S. 310; see also *The Duke of Bridgewater v. Bootle-cum-Linacre*, 36 L. J. Q. B. 41; 7 B. & S. 348; L. R. 2 Q. B. 4. [Semble, *per* Miller, J., *R. v. Landulp*, 1 M. & R. 393, is not correctly reported.]

But it was held in *R. v. Gee*, 1 E. & E., 1068, that where the sea-shore formed the boundary of the parish the portion of the shore between high and low water mark of ordinary spring and neap tides is within the boundary of the parish adjoining.

In the case *The Blackpool Pier Company v. The Assess. Comm. Fylde Union*, 46 L. J. M. C. 189 C. P. D., it was held that a pier constructed of a wooden deck and resting on iron piles, and which made no alteration in the line of high and low water mark, was, as to so much thereof as was below low water mark, not only extra-parochial and not rateable within 31 & 32 Vict. c. 122, s. 27, but was in fact beyond the realm. It might be made part of the parish or borough adjoining by Act of Parliament; Lord Coleridge, C. J.

And so where a river is the boundary, the presumption is that the adjoining parishes extend to mid-stream: *McCannon v. Sinclair*, 28 L. J. M. C. 247; 33 L. T. 221; 2 E. & E. 53.

Where a highway is the boundary between two coterminous parishes, that half of the highway which is on either

The bounds
of the
parish.

The sea-
shore
boundary.

River
boundary.

Highway a
boundary.

(a) But see now 45 & 46 Vict. c. 20, s. 4, "The Poor-Rate Assessment Act, 1869, Amendment Act, 1882," referred to *post*.

side of the *medium filum* belongs to the parish on that side : *R. v. The Strand Board of Works*, 33 L. J. M. C. 33 ; 9 L. T. 374.

Adjust-
ment of
bounds.

As to the adjustment of the bounds of parishes, see 42 & 43 Vict. c. 54.

Evidence
by reputa-
tion.

A Parliamentary survey made in 1652 (the time of the Commonwealth) is evidence, by reputation of the bounds of a parish : *Freeman v. Read*, 4 B. & S. 178 ; 32 L. J. M. C. 226 ; *Nicholls v. Parker*, 14 East, 331 n. But a determination of Inclosure Commissioners as to the boundary of a parish was held not conclusive : *R. v. St. Mary, Bury St. Edmunds*, 4 B. & Ald. 462 ; see also *R. v. Washbrook*, 4 B. & C. 732. In which case, however, it appeared that the commissioners had not pursued their authority. An award in a suit *inter alios* is not evidence of the bounds of either a parish or county : *Evans v. Reis*, 10 A. & E. 151 ; *Wenman v. McKenzie*, 5 E. & B. 447.

Assessment
committee.

The object of the Union Assessment Committee Act, 1862, 25 & 26 Vict. c. 103, was to make more effectual provision for the uniform correction of the valuation of parishes in the unions of England ; and to effect the settling of the valuations for the assessment of the poor-rates ; for this purpose the guardians of each union appoint annually at the first meeting after their election, six, and not more than twelve, of their members as “the assessment committee (a) of the union” ; and within three months after their appointment the overseers prepare the valuation list (b), and, as occasion may require, “supplemental lists.” And by sec. 25 the Act seems to be imperative, that a supplemental list must be made,—where there is new rateable property ; where the property has become divided by reason of the alteration of the occupation ; or where the property has increased or diminished in value. As to adding new houses not yet occupied, see *Malden v. Kingston*, 38 L. J. M. C. 125 ; S. C. *R. v. Malden*, L. R. 4 Q. B. 326 ; 10 B. & S. 323, see *infra*, tit., “The Union Assessment Acts.”

Overseers
to prepare
the “Valu-
ation List.”

Under sec. 14, Union Assessment Act, 1862, the overseers (c) in each parish in a union will prepare and make

(a) The term “assessment committee” means, in relation to any parish where there is no assessment committee, the persons having power to make and assess the poor-rate in such parish or place : Rating Act,

1874, s. 14.

(b) As regards any parish where there is no valuation list, the term “valuation list” means the poor-rate : Act 1874, s. 14.

(c) See 32 & 33 Vict. c. 41, s. 20.

out a list, and revise the old list, of those in the parish liable to be rated, and which list is styled, "The Valuation List" (a). It will be in the following form:—

Valuation List for (parish) in the County of ———.

Name of Occupier.	Name of Owner.	Description of Property.	Number or situation of Property.	Estimated Rental.	Gross Estimated Rental.	Rateable Value.

A rate not duly made will be a nullity: *Fox v. Davies*, 18 L. J. C. P. 48; 6 C. B. 11. The rate must show *ex facie* it has been made with proper authority: *Eastern Counties Railway Company v. Moulton*, 25 L. J. M. C. 49; 5 E. & B. 974; see also *Paynter v. R.*, 10 Q. B. 908; 16 L. J. M. C. 136; 7 Q. B. 255; 14 L. J. M. C. 136; *Scadding v. Lovant*, 16 L. J. M. C. 163; 13 Q. B. 687; 19 L. J. M. C. 5; *Douglas v. Clarke*, 3 M. & G. 485; *R. v. Millbank*, 4 M. & G. 222; 11 L. J. C. P. 113 (b). The rate must show authority, *ex facie*.

If the purpose of the rate be legally stated, *ex facie*, it cannot be quashed, although the money had been improperly expended; it must be disputed by an appeal against the overseers' accounts: *R. v. Gloucestershire (Mayor)*, 5 T. R. 346. Where rate good *ex facie* subject to appeal only. But now those accounts may also be subject to the scrutiny of the poor law auditor, with an appeal to the Local Government Board.

It is sufficient to describe the property as "land," without Description

(a) As to the appointment of collectors, see 2 & 3 Vict. c. 84, s. 2, passed in consequence of *The Poor Law Commissioners v. Cambridge Union*, 9 A. & E. 911; 8 L. J. M. C. 77.

or a person is charged who is not rateable at all, the rate may be either appealed against or disputed on distraint in an action of replevin: *Durrant v. Boyes*, 6 T. R. 580; *Millward v. Cuffin*, 2 W. Bl. 1330.

(b) Where a rate is a nullity,

of "land" naming it, or giving the estimation or situation: *Eastern Counties Railway v. Moulton*, 25 L. J. M. C. 49.

For what purpose rate to be made. The rate will be made to provide for the liabilities of the parish in relation to the charges for the poor incurred within the year: *R. v. Read*, 18 L. J. M. C. 164. It should be made prospective and not retrospective: *Durrant v. Boyes*, 6 T. R. 580; *R. v. Goodcheap*, *ib.* 159; *R. v. Sillifant*, 4 A. & E. 355; it was so held as to a church-rate: *R. v. Dursley*, 5 A. & E. 10; a borough-rate, *Wood v. Reid*, 2 M. & W. 777; there is, however, no general rule prohibiting a retrospective rate; each case must be governed by the statute: see *Harrison v. Stickney*, 2 H. & C. 108; an unforeseen debt may be a proper charge: *R. v. Read* (*supra*).

Rate when made. A rate is deemed to be made on the day when it is allowed by the justices: 32 & 33 Vict. c. 41, s. 17; *St. Mary Kalendar*, 9 A. & E. 626.

Publication of rate. The rate must also be published on the doors of all the churches and chapels in the parish, or otherwise it cannot be levied. The non-publication is a radical defect in itself which cannot be cured: *R. v. Newcombe*, 4 T. R. 368; *Sibbald v. Roderick*, 11 A. & E. 38; 3 P. & D. 106.

Where there is neither church nor chapel in the parish, which may happen in an extra-parochial place created into a "parish" under 20 Vict. c. 19, s. 1 (see *ante*, p. 379), and where there can be no publication of the rate, necessarily no rate can be levied: *R. v. Dyott*, 9 Q. B. D. 47; but see now 45 & 46 Vict. c. 20, s. 4, passed to remedy the defect in *R. v. Dyott*, whereby the publication of the rate may be made where there is neither church nor chapel in the parish, if within fourteen days after the making of the rate notice thereof has been given by affixing such notice in some public and conspicuous place or situation in the parish.

Rate cannot be abandoned. A rate when made cannot be abandoned: *R. v. Cambridge JJ.*, 2 A. & E. 370; but the overseers may so far abandon it as not to incur any expense in supporting it at the sessions: *R. v. Ponch*, 2 Q. B. 308; 11 L. J. M. C. 1.

Gross estimated rental (a) under the Section 15 of the Union Assessment Committee Act, 1862, defines the "gross estimated rental" to be "the rent at which the hereditament might reasonably be expected to let from

(a) See "The Valuation Metropolis Act, 1869," *infra*, p. 442, where the terms used are "gross value" and "rateable value," in lieu of "gross estimated rental."

"Gross value" in "The Rating Act, 1874," is to have the same meaning as "gross estimated rental" in the Act of 1872.

year to year, free of all usual tenants' rates (a) and taxes and tithe commutation rent-charge, if any. But this is not to interfere with the definition of the *net* annual value of hereditaments to be rated in the Parochial Assessment Act, 6 & 7 Will. 4, c. 96, s. 1, viz., "the rent at which the hereditaments might reasonably be expected to let from year to year, free of all usual rates and taxes and tithe commutation rent charges, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent. But this is not to alter the principles of the different relative liabilities to which they may be rateable : see *Hayward v. Brinkworth*, 10 L. T. 608 ; *Overseers of Sunderland-on-Sea v. The Sunderland Union*, 34 L. J. M. C. 121 ; 18 C. B. N. S. 531 ; 13 L. T. 239 ; *Allison v. Monkwearmouth*, 23 L. J. M. C. 177. As to small tenements, see *R. v. Bilston*, 35 L. J. M. C. 73 ; 6 B. & S. 908.

Union Assessment Committee Act, 1862.
Net annual value.

A voluntary payment by a landlord of a water-rate is not a tenants' rate, or an expense necessary to maintain the premises in a state to command the probable annual rent, and ought not to be deducted from the gross estimated rental of the premises : *R. v. Bilston*, 35 L. J. M. C. 73 ; L. R. 1 Q. B. 18 (this water-rate was paid in respect of a composition for the rate of a small tenement under a local Act).

Where a tenant agrees to take on himself the cost of the repairs, or any expense necessary to maintain the rateable value of the premises, such costs are to be *added* to the rent, and then deducted by the landlord, leaving the actual rent the tenant may pay as the amount to be assessed as the net annual value : *R. v. Wells*, 36 L. J. M. C. 609 ; L. R. 2 Q. B. 542 ; 8 B. & S. 607.

Tenant paying repairs.

Every person is to be rated in the present value of the estate he occupies, whether increased or not by improvements : *R. v. Mast*, 6 T. R. 154 ; see also *R. v. Shingle*, 7 ib. 549 ; *R. v. Kintmere*, 21 L. J. M. C. 13. And it has been held that a person who occupies that which may produce profit cannot exempt himself from being rated by his making no profit ; and in *R. v. Vange*, 3 Q. B. 242 ; 11 L. J. M. C. 117 ; Lord Denman illustrated the proposition by supposing a farmer being able to prove that he was holding his farm at an assignable amount of loss, and said, "Would that constitute an exemption from the poor-rate?" In *R. v. Parrott*, 5 T. R. 593, Lord Kenyon said, "Their objection is that they

The present net annual value to be rated, *et has sic statuibus*.

(a) Sewers rate is included : *R. v. Kildare*, 34 L. J. M. C. 17.

have made an unprofitable bargain with the lessors; but we cannot examine into that, it being sufficient to make them liable that they are the occupiers of rateable property." And Buller, J., remarked, "If the property be rateable, and the party rated be in occupation of it, we cannot examine any further, and inquire whether or not the tenant has made an unprofitable bargain." In a subsequent case before Lord Denman, his Lordship said, "The rate is to be on the occupier in respect of the beneficial nature of the occupation; the officers are to consider not dryly and only what would legally pass by the demise of it, but all the existing circumstances, whether permanent or temporary, wherever situated, however arising or secured, which would reasonably influence the parties to a negotiation for a tenancy as to the amount of rent." *R. v. The Grand Junction Ry. Co.*, 4 Q. B. 18; 13 L. J. M. C. 94.

In *R. v. Fletton*, 3 E. & E. 45; 30 L. J. M. C. 89-94; Cockburn, C. J., said, "The true principle according to which the value of the occupation to the hypothetical tenant contemplated by the Parochial Assessment Act is to be estimated, is to assume the continuance of those circumstances which constitute the value to the existing occupier, unless it be made to appear that those circumstances are about to undergo a change." As it is expressed in some cases, the property must be rated *rebus sic stantibus*; see *R. v. The Rhymney Ry. Co.*, L. R. 4 Q. B. 276; 38 L. J. M. C. 75. In a recent case, *Clark v. Alderbury Union*, 50 L. J. M. C. 33; *S. C. ex nom., Clark v. Fisherton Ongar*, 6 Q. B. D. 139, it was held that the lessee of a refreshment-room at a railway station, at a fixed annual rent, might show by his books, and his receipts and expenditure during the past year, in respect of those rooms, that the business was carried on at a loss, and that the rent received did not represent the true value of the premises. But it is not enough to show that the expenses laid out in any particular year had absorbed the profits of that year; the benefit of such expenses may be derived in future years, as was often the case with improvements of farms; Lord Ellenborough in *R. v. Agar*, 14 East, 256. The property must be valued *communibus annis*; see this principle applied by Lord Ellenborough to the rateability of saleable underwoods; *R. v. Mirfield*, 10 East, 219-225; see also *Great Western Ry. v. Badgeworth*, L. R. 2 Q. B. 251; 36 L. J. M. C. 33; *R. v. Hull Dock Co.*, 5 M. & S. 394.

Present
value.

As to what is "present" value, see also *Staley v. Castleton*,

33 L. J. M. C., 178 ; 5 B. & S. 505 ; *Harter v. Salford*, 34 L. J. M. C. 206 ; 6 B. & S. 591 ; *Newmarket Railway Co. v. Cambridge Overseers*, 23 L. J. M. C. 76—79 ; *R. v. Heaton*, 20 J. P. 37 ; see also *post*, as to the working of a mine without profit : see *post*, p. 418.

Rent is not rateable *per se* ; it bears the burthen of the State in the value of the occupation in the hands of the occupier. Nor is the rent the standing rule for making the poor-rate ; circumstances may differ, and there ought to be a regard *ad statum et facultates* ; D. Poor Rates, Vin. Ab. 425 ; see definition of rental, 25 & 26 Vict. c. 103, s. 15, Union Assessment Act, 1862. But it was said by Little Dale, J., in *R. v. Chaplin*, 1 B. & Ad. 926, “in case of a property lately let, the actual rent is the best criterion of the value.” And Patteson, J. said (S. C.), “where land is not actually let, it becomes necessary to calculate what a tenant would pay for it were it let. The actual rent is the criterion unless it can be clearly shown that it is too small.” And it is to be valued at what it would let *communibus annis* ; Taunton, J., S. C. : or, as remarked by Lord Denman, in *R. v. Westbrook*, *R. v. Everest*, 10 Q. B. 178 ; 16 L. J. M. C. 87, the amount which had been paid for rent is only evidence, and not the fact itself to be ascertained by the sessions. To show that £1,000 a year was agreed to be paid as rent for a refreshment room at a railway station, evidence was permitted to show an actual loss on the concern, and that the rent agreed to be paid was in excess of the value : *Clarke v. The Alderbury Assessment Committee*, *supra* ; see *Lord Bute v. Grindall*, 1 T. R. 338 ; *R. v. Parrot*, 5 *ib.* 593 ; *R. v. Vange*, (*supra*, p. 385). In *Jones v. Mersey Docks & Harbour Board* ; and *Mersey Dock & Harbour Co. v. Cameron*, H. L. 35 L. J. M. C. 1, it was said by Blackburn, J. (speaking on behalf of himself and four other judges, and in which the H. L. agreed), “in order that a valid rate may be imposed, it is essential that the occupation be of value beyond what is required to maintain the property ; for if the property be of so little value that the hypothetical tenant (under the Parochial Assessment Act) would either give no rent or a rent which, after deducting the average annual expense of the maintenance, would leave no surplus, there is nothing to rate” (*ib.* 9).

It was formerly a valid custom to rate all persons in the parish according to their apparent ability to pay ; and stock-in-trade and ships belonging to an inhabitant were rateable : *Nightingale v. Marshall*, 2 B. & C. 313 ; *R. v. Ambleside*, 16

Rent not rateable *per se*. Nor the standing rule on which to make the rate.

Rate formerly on “ability to pay.”

East, 308 ; Patteson, J. ; *R. v. Lumsdaine*, 10 A & E. 157.

The Parochial Assessment Act, 1836, 6 & 7 Will. 4, c. 96, establishing a uniform rating, made no alteration in the mode of assessing the profits in personal property : *R. v. Lumsdaine, supra*. In consequence of that decision temporary Acts have, from time to time, exempted that property from being rated ; the present temporary Act is 44 & 45 Vict. c. 70, and will remain in force until December 31st, 1882.

By the Union Assessment Committee Act, 1862, 25 & 26 Vict. c. 103, s. 36, the assessment was not to “ extend or be taken to render liable to be rated any property, or any person in respect of any occupation *not now* by law rateable to any property, or to deprive any property, or the occupier of any property, of the benefit of any exemption, in whole or in part, to which such property or occupier is *now* by law entitled,” &c.

Result of
Union
Assess-
ment Act,
1862.

The temporary Act at that time in force exempted an inhabitant from being rated “ in respect of his *ability* derived from the profits of stock-in-trade, or any other property, for or towards the relief of the poor.” The practical result of the Union Assessment Act, 1862, therefore, was to exempt stock-in-trade and ships from being rated as representing the “ *ability*” of the person for payment of rates. See Burn’s Jus. Peace, Tit. Poor, p. 850.

No inquiry
to be made
of profits
of trade.

On an appeal against the rating a chalk pit which was used in the manufacture of lime and cement, it was held that no inquiry could be made into the variable profits made from the use of the chalk, but only into the convenience and situation of the chalk pit in estimating the rent a tenant would reasonably pay : *R. v. Aylesford Union*, 26 L. T. 618 ; 37 J. P. 148.

In *R. v. Ferral*, 1 Q. B. D. 9, it was held that inspection might be made, and the books containing the entries of the receipts on a racecourse called for in evidence as elements for consideration in arriving at the value of the occupation, and to show the appellant was making more than he said he was.

In *R. v. Aylesford Union*, the question was not only what was the value of the hereditaments to let, but what was the profit from the particular mode of carrying on the business of the appellant, and whether his particular and personal mode of carrying on his business ought to increase the amount of the rate : see Field, J., in *Clark v. Fisherton*

Ongar, 6 Q. B. D. 139—143; *S. C. eo nom. Clark v. Alderbury Union*, 50 L. J. M. C. 33.

But although profits of trade are not rateable *per se*, nor to be taken as the test in determining the rateable value, yet they may form a material element in ascertaining the proper amount of the assessment: see *R. v. Birmingham Gas Co.*, 1 B. & C. 506. So in the case of the Steel-yard; part of a machine in the street connected with the house, was used for the weighing of waggons and carts; there were profits attached to the weighing; without those profits, the house was worth £5 a year; the profits were worth £40; those, after due deductions, were included in the rate as enhancing the rateable value of the house. Lord Mansfield considered the house and weighing machine as one entire thing. The principal purpose of the house was the use of the weighing-machine and the steel-yard, the most valuable part: *R. v. Gloucester*, Cald. 262; 1 T. R. 723, n.

R. v. Bradford, 4 M. & S. 317, is another case which is referred to on this point in which the principle was sought to be evaded, but not denied, of the value of the house being enhanced by the use made of it by demising a canteen at two distinct rents in the hope of contending that the rate should be made on the rent of the house only. The Court looked to the *substance* of the contract, and not the form, and held both sums to be one entire rent paid for the occupation of the house and the enjoyment of the advantages which, for the time, belonged to it, and, for the time, enhanced its value; Le Blanc, J., said, this was not rating the canteen-man in respect of the profits of his trade, but only in respect of the rent which he paid. The occupation of the house was indeed necessary for earning the profits of the trade, but the house became more valuable because it enabled the profit to be earned. These cases were recognized as leading authorities in *R. v. The London & South-Western Ry.*, 1 Q. B. 558; 11 L. J. M. C. 93; and other railway cases, *post*.

A conflict of decision has taken place on the rating of a brewery where it was let with the right to supply certain public-houses with beer, and which the tenants of those houses were bound under agreement to take. Lord Campbell, C. J., and Crompton, J., held that the advantage so derived was to be taken into consideration in assessing the value of the tenancy enhanced by the privilege attached to the brewery; and which would be taken into consideration in calculating the rent the tenant would give. It was an advantage only to be enjoyed at the brewery, and made the

But trade profits may form an element in assessing the value of the rent. The Steel-yard case, *R. v. Gloucester*.

The Canteen case, *R. v. Bradford*.

Brewery let with goodwill and trade of public-houses.

brewery more valuable. And Lord Campbell said he could not distinguish the case from the canteen case : *R. v. Bradford* (*supra*). Erle, J., however, dissented from this view, holding that only hereditaments are rateable, that is land with its appurtenances, and the contract between the occupier and another person was not a hereditament; and that the contract could no more become land in the case of the brewer than in the case of a grocer, or any other tradesman : *Allison v. Monkwearmouth*, 23 L. J. M. C. 177 ; 4 E. & B. 13. This view Erle, J., again maintained when Chief Justice in Common Pleas, and where he was supported by Smith, J., dissenting Byles, J., in *Sunderland near the Sea v. Sunderland* (*Guardians*), 34 L. J. M. C. 121. Erle, C. J., and Smith, J., sought to distinguish the two cases in reference to the Union Assessment Act and the Parochial Assessment Act ; but any such distinction Mr. Davis suggests can barely be supported : see Burn's Justice, "Poor," 939, n., ed. by Mr. Davis.

Surface-land used with the working an iron mine (the mine not at that time rateable) was enhanced in value by reason of its being attached to the mine, so that indirectly the value of the mine to an extent became rateable by means of the thereby enhanced value of the land : *Guest v. East Dean*, 41 L. J. M. C. 129 ; L. R. 7 Q. B. 334. See *Kittow v. Liskeard Union*, L. R. 10 Q. B. 7.

Who the occupier ; occupation *de facto*.

A person in the visible occupation of land is rateable as the occupier *de facto* without considering his title : Lord Kenyon, *R. v. Bell*, 7 T. R. 601 ; *R. v. West Middlesex Waterworks*, 28 L. J. M. C. 135, where the company were in the possession of "the mains" without any legal estate in the land. So trustees of a school are rateable on trust premises : *R. v. Stapleton*, 33 L. J. M. C. 17 ; 4 B. & S. 629 ; *R. v. Catt*, 6 T. R. 332.

Occupation in more than one parish.

Where a farm lies in two parishes, the sessions are not bound to determine the specific boundary of the acreage which lies within each parish : *R. v. Woods*, 1 E. B. & E. 481 ; 27 L. J. M. C. 289 ; 31 L. T. 179 ; see *R. v. Etwall*, 3 Smith, 15 ; *M'Cannon v. Sinclair*, 28 L. J. M. C. 247 ; *Jefferey's Ca.*, 5 Co. 66 ; 1 Bott, 122.

The "parochial earning system," and "acreage principle."

Companies, whether railway, canal, gas, waterworks, docks or otherwise, are rateable to the poor in every parish through which they may pass, in proportion to the profits which the land, occupied by them in such parish, yields. This is called, "the parochial earning system." Where this principle is not practicable, then "the acreage principle" is adopted : see *R. v. Kingswinford*, 7 B. & C. 237 ; *R. v. Bath*

(*Mayor*), 14 East, 609; *R. v. Rochdale Waterworks Co.*, 1 M. & S. 634. As to pipes sunk under ground, it makes no difference that other persons are rated for the surface of the land: *R. v. The Chelsea Waterworks Co.*, 5 B. & Ad. 156. See the leading cases subsequently referred to: *R. v. The Grand Junction Ry. Co.*, 4 Q. B. 18; *R. v. The Great Western Ry. Co.*, *ib.*, 179; 15 L. J. M. C. 80; *R. v. The South-Western Ry. Co.*, 1 Q. B. 558.

It was held in *the Mersey Docks & Harbour Board v. Liverpool* Docks in pool, L. R. 7 Q. B. 643; 41 L. J. M. C. 161; 26 L. T. 868; separate 20 W. R. 827, where the board was possessed of docks on parishes. both sides of the river Mersey, in Liverpool and in Birkenhead (different parishes), the whole being under one management, the rating the separate docks was not to be treated as one system; but the earnings and outgoings of each set were to be looked to as distinct, and each of the docks rated according to the independent earnings in each separate parish; see also *R. v. Foleshill*, *infra*, p. 421.

To constitute an occupation of the land within the meaning of the rating Acts, there must be a demise of the soil, or of something permanently attached to the land as a fixture, giving the absolute and exclusive possession of the soil. On this principle "advertising hoardings" were held not to be rateable: *R. v. St. Pancras Ass. Com.*, 2 Q. B. D. 581; 46 L. J. M. C. 243; nor a person licensed to sell refreshments at a stall in an exhibition building, *R. v. Morrish*, 32 L. J. M. C. 245; or the holder of a book-stall at a railway station, *Smith & Son v. Lambeth Ass. Com.*, 51 L. J. M. C. 106; nor the holding a stallage in a market without an exclusive occupation, *R. v. Bell*, 5 M. & S. 222; *Roberts v. Aylesbury*, 22 L. J. M. C. 34; 1 E. & B. 423; and see also the recent case as to the stallage tolls in Covent Garden, 51 L. J. M. C. 41, *post*, pp. 401, 402; and tit. "Moorings," *post*, p. 394.

The occupation must be capable of being beneficial to the occupier to be rateable, and when beneficial it is rateable to its full value, without regard to the amount of benefit which might be derived. See *Jones v. The Mersey Docks*, 11 H. L. 443; 35 L. J. M. C. 1. The rate should be made upon the rent, which might reasonably be expected from a hypothetical tenant, who took the property from year to year, *rebus sic stantibus*. "The language of the section is," Lord Denman remarked, in *R. v. Capel*, 12 A. & E. 382; 9 L. J. M. C. 65, "very inartificial and loose to a degree, which renders the discovery of a definite meaning

An interest in the soil of the land requisite.

Beneficial occupation.

to all its parts extremely difficult." So where a cotton-mill, owing to a scarcity of cotton, is not kept at work, and for which therefore a tenant would give nothing as from year to year: the mill was only rateable as for the use of the building for warehousing the valuable machinery. See 1 Nolan's Poor Law, 182; *Stanley v. Castleton*, 33 L. J. M. C. 178; 5 Q. B. 505; *R. v. Rhymney Ry. Co.*, L. R. 4 Q. B. 276; 38 L. J. M. C. 75; 10 B. & S. 198; 17 W. R. 530. Where the profits were exhausted, and no rent could be realised: see *Lincoln Corporation v. Holmes Common*, 36 L. J. M. C. 73; L. R. 2 Q. B. 482; 8 B. & S. 344. But see, however, upon an appeal against a poor-rate, evidence was held to be admissible, to show that the sums received and paid for provisions, salaries, &c., in carrying on the business of a refreshment-room at a railway-station, were in fact a loss: *Clark v. Fisherton Ongar*; *R. v. Aylesbury* (*supra*), explained; *Clark v. The Alderbury Union* (*supra*, p. 386): see, *infra*, the rating of "Mines," "Docks." The valuation may be on the land used for the growth of underwood for what it made on letting *communibus annis*: see *R. v. Chaplin*, 1 B. & Ad. 926.

Exclusive
possession
requisite.

A mere right or licence to enter and be on land is an easement not rateable: *R. v. Trent and Mersey Navigation Co.*, 4 B. & C. 57; *Watkins v. Gravesend and Milton Union*, 37 L. J. M. C. 73; *R. v. Aberavon*, 5 East, 460; but if such easement be accompanied with the right to remain there, and work the land, as in *Crosby v. Wadsworth*, 6 East, 602, where the appellant was to have the growing grass, and for that purpose to have exclusive possession of the field; the nature of the thing required him to have the sole occupation of the whole field, and was rateable. So the right to enter the land, and take coprolites, *Roads v. Trumpington*, 40 L. J. M. C. 35; L. R. 6 Q. B. 56; in which Blackburn, J., said, *Crease v. Sawle*, 2 Q. B. 862 (where a non-inhabitant lessee was rated as the occupier of a tin toll in Cornwall under 43 Eliz. c. 2, s. 1), was not to be extended; see *R. v. Todd*, 12 A. & E. 816; *R. v. Whaddon*, 44 L. J. M. C. 73; L. R. 10 Q. B. 230; 32 L. T. 633; 23 W. R. 153; *Mogg v. Yatton*, 50 L. J. M. C. 17, was also a case on the right to work land for coprolites. There the right extended over ten acres, allotted in each year for working; but only two and a half acres were in work at one time, and one acre was occupied with machinery. The use of the ten acres was constantly shifting, and after the digging out the coprolites was completed, the land was levelled, and given

Occupation
shifting.

over to the agricultural tenant. Cockburn, C. J., held that there was only an actual occupation of three and a half acres beneficial to the company working the land which was of any value to them; and that the right to the ten acres, although with a constant occupation of so much, was a perpetually shifting one as the operations were extended, and not as a whole rateable: the other members of the court—Mellor, Lush, and Archibald, JJ.—held that the company was rateable for the whole ten acres, as they had the exclusive occupation thereof during the year, with a privilege attached to it, at one yearly rent. And it was remarked by Mellor, J., in giving the judgment, that he could not see why the parish should lose the benefit of an acre of the ten acres, each of equal value, and together realizing a rental of £1000, for the purpose of rating to the poor-rate, because the parties had ingeniously arranged a mode of working the land, making only one-fourth of it profitable during any one quarter of a year. See *R. v. The Rhymney Ry. Co.*, 38 L. J. M. C. 75; 10 B. & S. 198; L. R. 4 Q. B. 276; and as to the rating of a brickfield, see *R. v. Everest*, *R. v. Westbrook*, 10 Q. B. 178; 16 L. J. M. C. 87; *Daniel v. Gracie*, 6 Q. B. 145; *ante*, p. 387.

Prior to "The Rating Act, 1874," 37 & 38 Vict. c. 54, Right of ss. 3, 6, the right of shooting over land was not in itself sporting-rateable; it was only so when it improved, and enhanced the value of the land: *per* Lush, J., in *Hilton v. Bowes*, 35 L. J. M. C. 137, 142.

Where a lease reserved the right of sporting over the land to the owner, it was held that there was a severance of a right from the occupation which was rateable: *Rogers v. St. Germain's Union*, 35 L. T. 332. Rights severed from the occupation.

The words of sec. 6, sub-sec. 2, Rating Act, 1874, are: "Where any right of sporting, when severed from the occupation of the land, is let, either the owner or the lessee thereof, according as the persons making the rate determine, may be rated as the occupier thereof." See *R. v. Battle*, 36 L. J. M. C. 1; L. R. 2 Q. B. 8; explained in *Kenrick v. Guilsfield*, 49 L. J. M. C. 27; *R. v. Thurlstone*, 1 E. & E. 502; 28 L. J. M. C. 106; *Eyton v. Mold*, 50 L. J. M. C. 39.

So also the right to fish, when severed from the occupation, is rateable: Rating Act, 1874, sec. 6, sub-sec. 1. Right of fishery. Such right was not, before, as a mere incorporeal hereditament or fishery, rateable: *R. v. Ellis*, 1 M. & S. 652.

An easement of a right of way, not being a grant of the Right of way.

profits of the land, is not rateable : *R. v. Jolliffe*, 2 T. R. 90 ; but a waggon-way, where there is an exclusive occupation of the ground, is rateable : *R. v. Bell*, 7 T. R. 598.

Rights of
common.

A right of common attached to land, and which affords a beneficial occupation, is rateable ; but, at the same time, the commoner must have such a possession as to give him a right of action in trespass, as a person having the *primum vesturam*. A bare right of common is not rateable *per se*. See *R. v. Churchill and Booth*, 4 B. & C. 750 ; 6 D. & R. 635 ; *R. v. Alnwick Common Council*, 1 P. & D. 343. See *R. v. Aberavon*, 5 East, 460 ; *Watkins v. Gravesend and Milton Union*, 37 L. J. M. C. 73 ; L. R. 3 Q. B. 350.

Right must
be sufficient
to give
action of
trespass.

Fines and
quit-rents.

Fines and quit-rents are casual fruits and profits, and not rateable : *R. v. Vanderall*, 2 Burr. 991. As to quit-rents, see *R. v. Aldbury*, 1 East, 534.

Moorings.

Stones and ballast had been lowered into the bed of the river Thames so as to make permanent moorings to which floating hulks were attached and used for loading and unloading coal, transferring their cargoes to lighters. A rent was paid for the accommodation to the Conservators. The moorings were held by the House of Lords to be rateable, confirming the Court of Appeal, *Cory v. Bristow*, H. L. 46 L. J. M. C. 273 ; L. R. 2 App. Ca. 262. In C. A. 45 L. J. M. C. 145 ; 1 C. P. D. 54, reversing the decision in Common Pleas, reported in L. R. 10 C. P. 504 ; 44 L. J. M. C. 153 ; 32 L. T. 797 ; 23 W. R. 615 ; see also *Watkins v. Gravesend*, 37 L. J. M. C. 73 ; L. R. 3 Q. B. 350 ; *Grant v. The Local Board for Oxford*, 38 L. J. M. C. 39 ; 9 B. & S. 900 ; L. R. 4 Q. B. 9, where the moored barge of the Oxford University Boat Club was held not rateable. There must be a permanent attaching to the land : *R. v. Morrison*, 22 L. J. M. C. 14 ; 1 E. & B. 150. See also *R. v. Leith*, 1 E. & B. 121 ; 21 L. J. M. C. 119 ; *R. v. Forrest*, 8 E. & B. 890 ; 27 L. J. M. C. 96.

Telegraph
posts.

The placing telegraph posts in the land is such a beneficial, exclusive use of the land, as to render a telegraph company rateable : *The Electric Telegraph Company v. Salford*, 24 L. J. M. C. 146 ; 11 Exch. 181. By the Telegraph Acts, 1868, 1869, no duty is payable on the Government telegraph property, excepting a voluntary rate : *R. (or Marylebone Vestry) v. The Postmaster-General*, 28 L. T. 337 ; 21 W. R. 459.

Public
institu-
tions,

In the days of Lord Mansfield, Lord Kenyon, Lord Ellenborough, and Lord Tenterden, the opinion prevailed, through a long series of authorities, that property held for public

purposes (though unconnected with the Crown), was exempt from payment of the poor-rates. This opinion was shaken by Lord Denman, and substantially overturned by Lord Campbell; but it was not finally extinguished until the judgments in the House of Lords pronounced in *Jones v. Mersey Docks*, 11 H. L. Ca. 443; 35 L. J. M. C. 1, from which it appears that trustees, as the legal occupiers of hospitals or lunatic asylums, are rateable to the poor-rate, the occupation being capable of yielding a net annual income, though it be not beneficial to the owner. And see also the Scotch case, which is not distinguishable from the *Mersey Docks cases*, *Clyde Navigation Trustees v. Adamson*, 4 Macq. 931, where the House of Lords held that Crown property, as well as property devoted to or made subservient to the Queen's Government, is exempt from the poor-rate; but property held upon trust to create or improve docks and harbours in seaport towns, though having a public character, and devoted to public purposes, is nevertheless subject to be rated for the relief of the poor. See *Leith Harbour and Docks v. The Inspectors of the Poor*, L. R. 1 H. L. Sc. App. 17.

The Mersey Docks Case has established (reversing the judgment in the Queen's Bench and Exchequer Chamber, and many other cases on the same point) that a public board may have docks or other property vested in them, within the meaning of "occupier," and that they are not exempt, by reason of their occupation being for public purposes, and not for any personal benefit. Lord Westbury, L.C., in giving his judgment in *Jones v. The Mersey Docks*, said: "The only occupier exempt from the operation of the Act is the King, because he is not named in the statute; and the direct and immediate servant of the Crown, whose occupation is the occupation of the Crown itself, also comes within the exemption. But this ground of exemption does not warrant many decisions which have held that property used for public purposes is not rateable. So also, trustees, who are in law the tenants and occupiers of valuable property upon trust for charitable purposes, such as hospitals or lunatic asylums, are, in principle, rateable, notwithstanding that the buildings are actually occupied by paupers, the sick, and insane." "The questions," said Lord Westbury, "raised in this appeal depend in a great measure on the inquiry, what is the occupation of real property which is liable to be rated under the 1st sec. of the 43 Eliz. c. 2? Independently of the decided cases, several of which are irreconcilable with each other, it would seem to be easy to answer this inquiry; and,

buildings,
docks, &c.,
not govern-
ment, used
for public
purposes.

having regard to The Parochial Assessment Act, 6 & 7 Will. 4, c. 96, it may be said, in answer, that 'occupation to be rateable must be of property yielding, or capable of yielding, a net annual value, that is to say, a clear rent over and above the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain the property in a state to command such rent.' It is in this sense that I understand the words 'beneficial occupation,' whenever it is said that to support a rate the occupation must be a beneficial one. For, on principle, it is by no means necessary that the occupation should be beneficial to the occupier. It is sufficient if the property be capable of yielding a clear rent over and above the necessary outgoings." The *Mersey Docks Board* was therefore held to be rateable, and that decision is now the leading authority (*a*).

Where profits are restricted by statute.

Where the occupiers, holding land for public purposes, are restricted by statute from deriving the full pecuniary benefit of their occupation, the land is to be rated to the poor-rate with reference to the amount of profit actually made, and not as regards the amount an occupier might earn without such restrictions: *Worcester (Mayor) v. Droitwich Assessment Committee*, 2 Ex. D. 49; 46 L. J. M. C. 241; 36 L. T. 186; 24 W. R. 336, C. A.; *Liverpool (Mayor) v. Wavertree*, 2 Ex. D. 55; 39 J. P. 101.

Hospitals.

Hospitals are rateable: *St. Thomas' Hospital v. Lambeth Overseers*, 49 L. J. M. C. 23; 5 Ex. D. 19.

Lunatic asylums.

Under the Lunatic Asylum Act, 1853, 16 & 17 Vict. c. 97, s. 35, lands and buildings acquired for the purposes of an asylum will, while used for such purpose, be assessed to the

(*a*) Mr. Davis, in his carefully edited (1869) edition of Burn's Jus. Peace, tit. "Poor," notes the following cases which are not now to be relied on after the decision in *Jones v. The Mersey Docks Co.*; *R. v. St. Luke's Hospital*, 2 Burr. 1053; *R. v. St. Bartholomew's Hospital*, 4 Burr. 2435; *R. v. Waldo*, 1 Bott, 182; Cald. 338; *R. v. The Commissioners of Salter's Load Stairs*, 4 T. R. 430; *R. v. Liverpool*, 7 B. & C. 61; 9 D. & R. 781; *R. v. River Weaver Navigation*, 7 B. & C. 70; *R. v. Beverley Gas Co.*, 6 A. & E. 645; *R. v. Liver-*

pool, 9 A. & E. 435; *R. v. Exminster*, 4 P. & D. 69; *The Oxford University and City of Oxford Poor Rate*, 27 L. J. M. C. 33.

Other cases on the point of beneficial occupation may be considered in effect as overruled: *R. v. Goodchild*, El. B. & El. 1; 27 L. J. M. C. 233 (see *R. v. Sherford*, 36 L. J. M. C. 113; 38 L. J. M. C. 78); *Williams v. L'angeinren*, 1 B. & S. 699; 31 L. J. M. C. 54; *Scireen v. Farewell*, 3 B. & S. 797; 32 L. J. M. C. 161; *R. v. St. George, Southwark*, 10 Q. B. 852.

county, parochial, or other local rates at no higher value or more improved rent than the value or rent at which the same were assessed at the time of the purchase or acquisition: see *R. v. Fulbourne*, 34 L. J. M. C. 106; see *post*, "Prisons."

The chaplain's residence at the asylum is not within any exemption and is rateable; his duties do not require him to be resident; but the residence for the medical man is exempt under sec. 55, as he is required to be "resident in the asylum." He is entitled to a house, &c., reasonable for his accommodation considering his position, and situate near the asylum; and the rating would be on the lower scale: *Congreve v. Upton*, 33 L. J. M. C. 83.

Resident officers of asylum.

Land cultivated by the patient lunatics, with skilled labourers, is land used for the purposes of the asylum and the health of the patients, and to be rated accordingly under the statute: *R. v. Fulbourne, supra*; see the distinction between such occupation and the user of a farm attached to a prison: *Gambier v. Lydford*, 3 E. & B. 346; 23 L. J. M. C. 69; *Smith v. Birmingham*, 7 E. & B. 483; S. C. *R. v. Smith*, 26 L. J. M. C. 105.

Land used for health of inmates of a lunatic asylum.

Notwithstanding the plain decisions in the Mersey Docks cases, attempts have been made to exempt buildings from rating which are clearly rateable; for instance, it was sought to exempt the Institute of the Society of Engineers as being a society whose primary object was the acquisition and advancement of scientific knowledge: *R. v. The Institute of Civil Engineers*, 5 Q. B. D. 48; 49 L. J. M. C. 34.

Institute of Civil Engineers.

Premises occupied as a school, the occupiers of which have received a certificate under 29 & 30 Vict. c. 118, s. 7, constituting it a certified industrial school, are not exempt from liability to be rated to the poor-rate: *R. v. West Derby Overseers*, L. R. 10 Q. B. 283; 44 L. J. M. C. 98; 32 L. T. 400: see "Reformatories," *post*, p. 400.

Industrial school.

It is in the discretion of the rating authority whether they will exempt, under 32 & 33 Vict. c. 40, s. 1 (a), a building used as a Sunday or ragged school, used for the gratuitous education of children, from any rate: *Bell v. Crane*, L. R. 8 Q. B. 481; 42 L. J. M. C. 122; 29 L. T. 207; 21 W. R. 911. As to the exemption of reformatory schools, see *Shepherd v. Bradford Churchwardens*, 33 L. J. M. C. 182; 16 C. B. N. S. 369; 29 & 30 Vict. c. 117;

Sunday and ragged schools.

(a) Short title, "Sunday and Ragged Schools exemptions from Rating Act, 1869." See also 3 & 4 Will. 4, c. 30.

17 & 18 Vict. c. 86 ; 18 & 19 Vict. c. 87 ; 20 & 21 Vict. c. 55.

Charity school.

Where the house was used as a private charity school, it was held to be rateable : *R. v. Stapleton*, 32 L. J. M. C. 17 ; see also *Laughlin v. Saffron Hill*, 12 L. T. 542.

Market trustees.

Market trustees receiving tolls, although there was no surplus revenue, were held rateable : *R. v. Badcock*, 6 Q. B. 786. (See "Tolls," *infra*.)

Water-works commissioners.

Commissioners and companies of waterworks were held rateable in many cases : *Cortes v. The Kent Water Works*, 7 B. & C. 314 ; *R. v. Longwood*, 13 Q. B. 116 ; 18 L. J. M. C. 65 ; *R. v. Harrowgate*, 20 L. J. M. C. 25 ; *R. v. Kentmere*, 21 L. J. M. C. 13 ; *R. v. Manchester*, 21 L. J. M. C. 160 ; *Liverpool (Mayor) v. West Derby*, 25 L. J. M. C. 112 ; see Public Health Act, 1875, 38 & 39 Vict. c. 55, ss. 56, 57 ; 11 & 12 Vict. c. 63, s. 93.

Cemetery company.

A cemetery company (under a local Act) was held rateable for the plots sold for interment ; the consideration money being treated as part of the annual value of the occupation of the land : *R. v. Kensington*, 12 A. & E. 824 ; *R. v. The Abney Park Cemetery Company*, 42 L. J. M. C. 124 ; L. R. 8 Q. B. 515 ; 29 L. T. 174.

Local Board of Health.

The Local Board of Health was held rateable for the occupation of a yard used for the deposit of materials for the highways : *R. v. Cooper*, 23 L. J. M. C. 183.

Union workhouse.

As to rating a workhouse situate in another parish, see *Holborn Union v. St. Leonard's*, 28 L. T. 106.

Municipal corporations.

4 & 5 Vict. c. 48, was passed to render municipal corporations named in schs. A. & B. to Municipal Corporations Act rateable to the poor-rate in certain cases, which is now extended to *all* municipal corporations by 16 & 17 Vict. c. 79, s. 2, and they are so rateable in respect of all lands, tenements and hereditaments being the property, and in the occupation of such municipal corporations as if such lands, tenements and hereditaments were not corporate property, any law, usage or custom to the contrary notwithstanding ; but where such property lies in a parish wholly within the boundaries and limits of a city or borough (in sch. A. or B.), and in which the poor are relieved by one entire rate, or in which city or borough the poor within the boundaries or limits thereof, as existing for municipal purposes at the time of the passing the Municipal Corporations Act, were then relieved by one entire rate, the exemption from rateability shall continue (sec. 1), and the corporations are to be deemed the beneficial occupiers for all rating purposes : sec. 2.

This Act was passed in consequence of the decisions *R. v. Liverpool (Mayor)*, 9 A. & E. 435; *R. v. Exminster (Inhs.)*, 12, *ib.* 2.

By 39 & 40 Vict. c. 61, s. 30, the proviso of exemption in sec. 2 (*supra*) was repealed; and now *no* corporate property is exempt from rateability on the ground that it belongs to a municipal corporation.

See *R. v. Oldham (Mayor)*, L. R. 3 Q. B. 474; *R. v. York (Mayor)*, 6 A. & E. 418.

As to a corporation's non-rateability in respect of a common subject to a *profit à prendre* in the freemen which exhausted the whole value of the occupation, see *Lincoln (Corporation) v. Holmes Common (Overseers)*, L. R. 2 Q. B. 482.

The corporation of the masters and fellows of a college at Cambridge were held to be "occupiers" and rateable: *R. v. Gardner*, Cowp. 79. Corporate bodies of a college.

As to rating Dissenting chapels, see *R. v. Agar*, 14 East, 256; *R. v. Liverpool, ib.* Dissenting chapels.

The Crown, not being named in the statutes authorising assessments for the relief of the poor, is not subject to the poor-rate. This immunity has a wide signification; the royal palaces are not only exempt, but the House of Lords; so also the Government offices, as the Post Office, Horse Guards, Admiralty (*a*), &c., on the ground that they are in the service of the Crown (*b*). Crown and public property.

Prisons are not rateable; but a farm taken by the prison authority as an adjunct to the prison for the employment of convict labour may be rateable. And so also any part of the premises which may be occupied in excess of what may be necessary for the use of an official will be rateable; so also the part occupied as a canteen, or farm (p. 397) for the employment of the convicts. See *Gambier v. Lydford*, 3 E. & B. 483; 23 L. J. M. C. 69; see also *R. v. The Township of Castle View, Leicester*, 36 L. J. M. C. 192; L. R. 2 Q. B. 493. Prisons as Crown property.

The excess of accommodation beyond what is required for the personal use of the official in a Government establishment is rateable. But whether the official be married or single is to be taken into consideration in estimating the amount of Excess of accommodation by officials.

(*a*) See *Lord Amherst v. Lord Somers*, 2 T. R. 372; *R. v. Stewart*, 8 E. & B. 360; 27 L. J. M. C. 81; *Smith v. Birmingham*, 7 E. & B. 483; *S. C. R. v. Smith*, 26 L. J. M. C. 105.

(*b*) The Government contri-

bute a modified proportion towards the poor-rates in accordance with an assessment fixed by the Treasury. But this is entirely a voluntary rate: *R. v. The Postmaster-General*, 28 L. T. 337; 21 W. R. 459.

reasonable or necessary accommodation to be allowed for: see *Gambier v. Lydford* (*supra*); *R. v. Fuller*, 8 E. & B. 365; *R. v. Stewart*, *ib.* 360; 27 L. J. M. C. 81; *R. v. Stainsby*, 8 E. & B. 370; *R. v. Breton*, *ib.* 375; *R. v. Foster*, *ib.* 380; 27 L. J. M. C. 81.

If the premises, although beyond the precincts of the Government establishment, be occupied by the officer solely for the purpose of the performance of his duty, they are free from the rating: *Bedfordshire JJ. v. St. Paul, Bedford*, 7 Ex. 650.

But the occupation must not be in lieu of a money payment for rent or other expenses: *Smith v. St. Michael, Cambridge*, 3 E. & E. 383; 30 L. J. M. C. 74.

Tenants of
the Crown;
residents
at Hamp-
ton Court.

So, although Crown property is not rateable, yet persons occupying such property at a rental are rateable; so also are those occupying, by the Sovereign's permission, apartments in Hampton Court, rateable, the same being held for the subject's benefit: *R. v. Lady Emily Ponsonby*, 3 Q. B. 14. But not the housekeeper, who is a servant under the Crown (*ib.*); see also *R. v. McCann*, 37 L. J. M. C. 25; *affd. ib.* 123.

The Crown
the lessee.

But otherwise where the Crown takes a lease of land from a private person: *Lord Anherst v. Lord Somers*, 2 T. R. 372.

Local
police.

Premises occupied by the local police are exempted from rateability: *Lancashire JJ. v. Stretford*, E. B. & E. 225; 27 L. J. M. C. 209; S. C., *R. v. Lancashire JJ.*, 27 L. J. M. C. 209; so a county court: *R. v. Manchester*, 3 E. & B. 336; 23 L. J. M. C. 48; *R. v. Worcester*, 11 A. & E. 57; so judges' county assize lodgings: *Hodgson v. Carlisle Local Board of Health*, 8 E. & B. 116.

Reforma-
tories.

A reformatory is in the nature of a gaol, and exempt: *Sheppard v. Bradford*, 33 L. J. M. C. 182, see *ante*, p. 397, "Ragged Schools."

The Mu-
seum for
Practical
Geology.

The Museum for Practical Geology, as being part of the hereditary property of the Crown, was held exempt from rating: *De la Beche v. St. James', Westminster*, 4 E. & B. 385; 24 L. J. M. C. 74.

The Royal
Academy.

So the Royal Academy was held not to be rateable as holding property of the Crown, and the council having no beneficial occupation apart from the purposes of the Royal Charter of George III. The council are to be considered as agents of the Crown furthering the national objects of their charter. *R. v. Shee (Sir M. A.)*, 4 Q. B. 2.

Govern-
ment

In *Lancashire JJ. v. Cheetham*, 37 L. J. M. C. 12,—a case decided since *Jones v. The Mersey Dock and Harbour Com-*

pany—where a part of the county assize courts and judges' lodgings were used by the City for their quarter sessions, &c., on payment of rent, the justices were held rateable in respect of the part let, although the rent was insufficient to pay the annual expenses. buildings, when let, rateable.

Tolls, *per se*, are not rateable: *R. v. Nicholson*, 12 East, 330; *Williams v. Jones*, *ib.* 346; *R. v. Milton*, 3 B. & Ald. 112; *Lewis v. Swansea*, 25 L. J. M. C. 33; 5 E. & B. 508. Tolls. Markets.
In *R. v. Milton*, Holroyd, J., said, "I do not mean to say that a rate may not be made on rateable property under the denomination of tolls, provided the property from which the toll arises be within the parish, and the rate be confined to that property." Tolls are only rateable where connected with the occupation of land; and so market tolls, having nothing to do with the use of the soil of the market, are not rateable: *R. v. Bell*, 5 M. & S. 221; but the lessees of the stallage would be: *Roberts v. Aylesbury*, 22 L. J. M. C. 34; L. R. 7 Q. B. 328; 26 L. T. 574; and see *Spear v. Bodmin Union*, 49 L. J. M. C. 69; 1 E. & B. 423; see also *Caswell v. Wolverhampton*, 41 L. J. M. C. 108; *Lewis v. Swansea*, 5 E. & B. 519; *R. v. Earl of Durham*, 28 L. J. M. C. 239.

In *Percy v. The Ashford Union*, 34 L. T. 579; 40 J. P. 502, there was an ancient market at Ashford, founded on a charter of Charles II. (1671). In 1856, Percy's lessors, incorporated as a limited company, obtained a conveyance of land in the manor, and "all the tolls, stallages," &c., arising from all markets, &c., held in the town of Ashford. The land occupied by the market was fenced off and kept locked when not used for market purposes. Pens were appropriated to particular owners and salesmen; others were free for any animals in the market. All animals paid toll for admittance to the market. It was held that *the tolls for admittance* to the market were incident to the soil so as to be taken into consideration as increasing the value of the occupation, and were not mere market tolls which could not be rated.

An important case has recently been heard, in the Q. B. D., on the question of rating market-tolls. The Duke of Bedford, as the owner of Covent Garden Market under a Royal Charter granted by Charles II., and subsequently embodied in an Act of Parliament, 53 Geo. 3, c. xxxi., and 9 Geo. 4, c. cxiii., passed for the regulation of the market, and by which the right to take the tolls granted under the charter of Charles was confirmed. The question raised was whether those tolls should be estimated in the general assessment of the market. The Assessment Committee had assessed the The Covent Garden Market case.

gross yearly value, including the tolls, at £12,000, and the rateable value at £10,000. This sum was reduced on arbitration to £11,250 gross, and 9,350 net rateable value. On this the Duke appealed to the sessions, and the sessions were against the Duke on the rating of the tolls, excepting with regard to the sum of £46, representing a sum received from certain waggons, which were placed in certain unoccupied parts of the market. With regard to other portions of the toll, the toll was paid, for all practical purposes, for the use of definite places where stalls were erected, which were, therefore, distinguishable from the tolls taken merely for the use of the market. Grove, J., gave judgment (with Lopes and Bowen, JJ.), and held that the value of the soil in the market to the Duke was enhanced by the specific occupation of the soil. Where tolls were levied merely in respect of goods brought into a market, without any definite occupation of the soil, such tolls were in the nature of a franchise, and were not rateable; but where a specific place had been allotted for the sale of any particular goods, although that place was not stallage in the sense of a stall actually erected, still they were rateable as being in the nature of stallage; and there was authority to show that a very slight appropriation would come under the nature of stallage—for instance, a basket used and fixed on the soil as a table (a). The distinction really was between that which was in the nature of stallage, and what might be described as ambulatory traffic. The tendency of the mind of the court was that the tolls for the waggons were not rateable; but with respect to that rate the case was referred back to the arbitrator for further inquiry: *The Duke of Bedford v. Covent Garden Overseers*, 51 L. J. M. C. 41.

Tolls for
sale only
without
occupation
of the soil.

The lessee of a market is not rateable in respect of tolls received for animals brought into the market for sale, but not placed in pens so as to occupy any part of the soil, the toll being received on the entrance of the animal into the market: *Curwell v. Wolverhampton*, L. R. 7 Q. B. 328; 41 L. J. M. C. 108; 26 L. T. 574.

Ferry tolls.

Ferry tolls can only be rated as appurtenances to the landing-place: *R. v. North and South Shields Ferry Co.*, 1 E. & B. 140; 22 L. J. M. C. 9. They cannot be excluded from consideration; they must be taken as enhancing the value of the land used for the purpose of earning the tolls. On the

(a) See *Bowes v. Fenwick*, 43 L. J. M. C. 107; L. R. 9 C. P. 339.

same principle the toll-house will be rateable: *Williams v. R. v. Bedminster Committee*, 45 L. J. M. C. 117; 1 Q. B. D. 503; 34 L. T. 795 (see *R. v. Gloucester*, Cald. 262, *ante*).

The lessee of a toll traverse, who is not the occupier of any of the land in respect of which the toll arises, is *not* rateable: *R. v. Snowden*, 4 B. & Ad. 713; if an occupier he is rateable: *R. v. The Marquis of Salisbury*, 8 A. & E. 760. Toll tra-
verse.

A corporation in the possession of land, with the right of taking toll, is *prima facie* liable to be rated: *Worcester v. St. Clement's*, 22 J. P. 319.

Tolls earned in respect of lighthouses are not in general rateable: *R. v. Relest*, Cald. 155, 351; *R. v. Teignmouth*, 12 East, 46; *R. v. Coke*, 5 B. & C. 797; *R. v. Fowke*, *ib.* 814. But in a MS. case stated by Mr. Glen (1 Glen's Poor Law Statutes, 40): *The Blyth Harbour Dock Co. v. The Teignmouth Union*, where the harbour commissioners had found it desirable to put up a lighthouse in order to induce ships to come into the harbour, and thereby more dues were earned, the lighthouse was held to be rateable. Light-
house
tolls.

Tolls connected with a towing-path or toll-gate: *R. v. The Mayor of London*, 4 T. R. 21; or with a lock on a canal: *R. v. The Aire Navigation*, 3 B. & Ad. 139; *R. v. Marquis of Salisbury*, 8 A. & E. 716; *R. v. Coke*, 5 B. & C. 797; or a sluice upon a navigable river, in relation to which tolls were paid by vessels passing: *R. v. Cardington*, 2 Cowp. 581; see *R. v. The Trent and Mersey Navigation Co.*, 1 B. & C. 545; *R. v. Palmer*, *ib.* 546; tolls for anchorage ground: *R. v. Earl of Durham*, 28 L. J. M. C. 232. These and the like, being connected with and incident to the use of the land, are rateable: see *R. v. Bell*, 3 M. & S. 221. Towing
path,
Canal
lock,
River
sluice,
Anchorage
tolls.

The 43 Eliz. c. 2, s. 1, enacts that the parson, vicar, and occupiers of "tithes impropriate, and propriations of tithes" shall be rated; and Dalton says, "Every clergyman is to be rated for his glebe and tithes according to their yearly value, so long as they are in his occupation:" Dalt. Just. c. 73 (1742); *R. v. Hopkins*, 3 Keb. 235. Tithes (a).

Under the Parochial Assessment Act, 1836, 6 & 7 Will. 4, c. 96, s. 1, all rates are to be made on the net annual value of the property; to that section there is a proviso "that nothing herein contained shall be construed to alter or affect the principles or different relative liabilities (if any) accord-

(a) For an interesting account of the law relating to tithes, see Castle on Rating, p. 302.

ing to which different kinds of hereditaments are now by law rateable."

Sir W. Follett in *R. v. Capel*, 12 A. & E. 382; and Sir Fitzroy Kelly in *R. v. Goodchild*, E. B. & E. 1; 27 L. J. M. C. 239; stated that it was an historical fact that that proviso was inserted to prevent the inequality which would have resulted from assessing tithes at their full annual value while other real property was assessed only at rack rent.

But Lord Denman said, in *R. v. Capel* (*supra*), that the proviso had no such effect. And it was held that the tithe rent charge in lieu of tithes is to be assessed like other property, according to what it might reasonably be expected to be let for from year to year: see also *R. v. Jodrell*, 1 B. & Adol. 409.

Curate's
stipend
not to be
deducted.

The allowances and deductions specified in the Parochial Assessment Act cannot apply to a tithe rent charge. But the principle on which the rent charge is to be assessed is to be, like all other property, according to what might reasonably be expected to be obtained as rent from year to year, for the maintenance of the rent charge does not depend on the curate's stipend, and *the rateable value to the poor-rate must not be confounded with the remunerative value to the incumbent*: *R. v. Sherford*, 36 L. J. M. C. 113; L. R. 2 Q. B. 503; 8 B. & S. 596, on the question of allowing as a deduction the curate's stipend, overruling the Hackney case, *R. v. Goodchild* (*a*), on the authority of *The Mersey Docks Cases*, 11 H. L. C. 443; 35 L. J. M. C. 1; the principle of the decision in those cases being (said Blackburn, J.), that when a person is in occupation of property capable of yielding a profit, the occupier is rateable in respect of that profit, and it is quite immaterial to whom it is paid. If the tithes were rendered in kind, and were rented, the lessee would be rateable in the same amount, whether the whole rent were paid to the incumbent, or part went to a curate; and in deciding upon the amount, the nature of the property is to be regarded, and it is to be considered whether a profit can be looked to or expected, as in the case of farms; and whether anything over the expenses for collecting, and the allowances for bad debts and law expenses, would be necessary to induce a tenant to take. These questions are to be determined according to the circumstances of each particular

(a) See *R. v. Goodchild*, reflected on by Cockburn, C. J., in *Whitaker v. Birmingham*, 1 B. & S. 726, 727; 31 L. J. M. C. 62; and by Blackburn, J., in *Williams v.*

Llangeinwen, 1 B. & S. 708; 31 L. J. M. C. 57; and which cases, with *Fawcett v. Scriven-with-Tentergate*, 32 L. J. M. C. 161; 3 B. & S. 797, are also overruled.

case: *per* Crompton, J., *R. v. Goodchild*, *R. v. Lamb*, and *R. v. Hawkins*, 27 L. J. M. C. 233, 254; E. B. & E. 1.

Deductions will be allowed in respect of expenses for collection, including commission, law expenses, and bad debts, losses by ultimate non-payment, the poor-rate, the general rate, lighting rate, tenants' property-tax, and tenants' rates, tenths, and ecclesiastical dues; but not landlord's property-tax, or land-tax. No deduction is to be made for the curate's stipend, although his services may be essential. Deductions to be made.

A payment made by the incumbent to Queen Anne's Bounty is not a charge to be deducted from the tithe rent charge in order to ascertain its rateable value: *R. v. Lamberhurst*, 27 L. J. M. C. 248; 31 L. T. 9; *R. v. Goodchild* (*supra*).

See further, as to deductions, *R. v. Joddrell*, 1 B. & Ad. 403; *R. v. Groves*, 29 L. J. M. C. 179; *Lawrence v. Tolleshurst Knights*, 31 L. J. M. C. 148.

Promoters taking lands under the Lands Clauses Consolidation Act, 1845, s. 133, are liable to make good any deficiency in the assessments on the land taken by them. The promoters are to pay any deficiency, but it does not render them liable to be rated; and, as Willes, J., remarked, "The intention of the statute was, that the corporation should pay the deficiency as to any houses pulled down, not that it should be rated for them:" *The Mayor of London v. St. Andrew's, Holborn*, 36 L. J. M. C. 95. See also *Stratton v. Metropolitan Board of Works*, L. R. 10 C. P. 76; 44 L. J. M. C. 33; 31 L. T. 673; 23 W. R. 447; *R. v. Metropolitan District Ry.*, 40 L. J. M. C. 113; L. R. 6 Q. B. 698; also *Whitechurch v. The East London Ry. Co.*, 41 L. J. M. C. 123; L. R. 7 Ex. 248, 424; L. R. 7 H. L. 81; 43 L. J. M. C. 159, overruling on the point, when the works are to be considered as complete in each parish: *R. v. The Metropolitan District Ry.*, *supra*. Lands acquired under the Lands Clauses Consolidation Act, 1845, s. 133.

The railway having been completed for traffic, the principle on which the proprietors are to be assessed was first fully laid down in the early cases: *R. v. The South-Western Ry. Co.*, 1 Q. B. 558; 11 L. J. M. C. 93; *R. v. The Grand Junction Ry. Co.*, 4 Q. B. 18; 13 L. J. M. C. 94; 1 N. S. C. 303, and *R. v. The Great Western Ry. Co.*, 6 Q. B. 179; 15 L. J. M. C. 80. The South-Western Railway earned their profits by receipt of fares on their own line; the other companies had, in addition, branch lines attached to their system, from which they also secured income. The court laid it down that in each case the inquiry must be the same— Railways. Principles of rating as held by the Court of Queen's Bench.

what is the value of the occupation from whatever source derived? In neither can the profits of trade as such be brought into the rate; but if the ability for carrying on a gainful trade upon the land adds to the value of the land, that value cannot be excluded, because it is referable to the trade. It is what the occupation of the land gives the means of doing or enjoying which regulates the rent a tenant can give. A lessee of a railway would consider the facilities and advantages which the occupation as tenant would afford him of carrying on a locomotive trade as carrier, and in whatever proportion that consideration would increase the rents, in the same proportion, after due allowances, would his rate be raised also.

Two propositions are equally true: that the rate is not to be imposed in respect of the profits of the trade; and that it is to be imposed in respect of the value of the occupation. The gross yearly receipts of the company as occupiers of and carriers on the railway must at least include the proper subject-matter of the rate.

In these cases, the first starting-point was to fix the annual gross earnings. From these certain deductions were made; 1stly, £5 per cent. on the capital assumed as necessarily employed in the trade in the purchasing of engines, &c.; 2ndly, £20 per cent. on the same sum for tenants' profits; 3rdly, £12 10s. per cent. on the same sum for depreciation of stock, considered to be in the hands of a tenant from year to year, beyond all needful and usual annual repairs and expenses; 4thly, a sum representing the annual cost of conducting the trade; 5thly, the annual value of all the land occupied by stations, &c., and elsewhere rated (*a*); and 6thly, a sum per mile for the reproduction of rails, chairs and sleepers. These deductions, the Court considered, included whatever was properly referable to trade, and distinguished from the increased value which that trade gave to the land; and the residue must represent the value of the occupation, and thus the profits of the trade are excluded, and the advantages and privileges which the company possess are attributable to their occupation, and would pass with it: see *post*, the case before the Railway Commissioners, *the Manchester, Sheffield & Lincolnshire Ry. Co. v. Glandford & Brigg Unions*, 32 L. T. 264.

(*a*) *R. v. Eastern Counties Ry. Co.*, 9 Jur. 1339; *R. v. Mile End Old Town*, 10 Q. B. 219; 16 L. J.

M. C. 184; *R. v. The West Mid-
d'esch Water Works*, 28 L. J.
M. C. 135.

In *R. v. The North Staffordshire Ry. Co.*, 30 L. J. M. C. 68, The North a question was put to the Court whether the appellants were entitled to a deduction for interest on capital and tenants' profits upon a sum of £52,950, the additional amount of capital invested in turn-tables, cranes, weighing-machines, stationary steam-engines, lathes, electric telegraph and apparatus, office and station furniture, and gas-works. The Court replied that the articles might be divided into three classes: first, things moveable, such as office and station furniture; secondly, things so attached to the freehold as to become part of it; and thirdly, things which, though capable of being removed, are yet so far attached as that it is intended that they shall remain permanently connected with the railway, or the premises used with it, and remain permanent appendages to it as essential to its working. It is clear that in respect of the first class of articles a deduction should be allowed, and no deduction on the second. And as to the third, the question was finally settled by *R. v. The Southampton Dock Co.*, 14 Q. B. 587; 20 L. J. M. C. 155, which held, on the authority of *R. v. The Birmingham & Staffordshire Gas Light Co.*, 6 A. & E. 634, that such property was not to be considered as stock-in-trade, but as machinery, and should be assessed in combination with the real property. So also as to the railway sleepers, *Great Western Ry. v. Melksham*, 34 J. P. 103.

No deduction is to be made on account of goodwill: *R. v. The Grand Junction Ry. Co.* (*supra*).

In a case before the Railway Commissioners in 1875, the question of the method of rating railways and docks came under review; and it was suggested that prior to 1862, when the Assessment Committees were established, railway companies had been much under-rated. The following rules were then laid down by the Railway Commissioners as the proper method, in their view, of ascertaining the rateable value of railways and docks:—

1. A better criterion of the receipts due to the portion of the line of railway, within the limits of a certain parish, may be gained by taking the average mileage receipts of the whole line, than by taking a mileage division of the gross rates, less the amount charged at each end for collection and delivery, although every line may not have equally contributed to the receipts of the whole line (*a*).

Principles of rating as held by the Railway Commissioners.

(*a*) See *ante*, the leading cases, *Grand Junction Ry. v. R. v. Great Western Ry.*; *R. v. South Western Ry.*; *R. v. Great Western Ry.* in the Q. B.

2. Whatever part of a goods-rate covers ordinary station work at a terminus, it should all be taken to be receipts of the line to which the terminal station belongs (*a*).

3. The railway company provided the working stock of another line of railway, the company being paid at the rate of 1s. 1*d.* per train mile, and afterwards by a percentage of $33\frac{1}{3}$ upon the total traffic receipts; and the amount received on that account in one year was £7,254. The Commissioners held that that sum should be taken as the aggregate amount of the expenses for locomotive power and repairs of carriages and waggons, and relative services, and be divided amongst the parishes according to the train miles run in each.

4. It was further held that there should be no deduction made for profits on capital; but that there should be a deduction for tenants' profits as distinct from profits on capital; and that the amount be 5 per cent. upon the gross receipts, such percentage to cover outlay in floating capital, stores, furniture and the like.

5. The main line of a railway company ran through a certain parish for a distance of two miles and eight chains. The gross receipts in the parish were ascertained by dividing the gross rates by mileage between the forwarding and receiving stations after deducting, in the case of the merchandise traffic, the amount charged at each end for collection and delivery. This was held to be a proper mode of calculating such receipts, provided a deduction for cartage was made at the clearing-house, and that, as regarded local traffic, only what the company should expend in carting goods, carried at carting rates, and a reasonable profit thereon, should be taken off the gross rate.

6. The railway company owned and occupied certain docks, which, on their seaward side, were employed in the accommodation of shipping, and the transit of goods by sea. In other respects they were an adjunct of the railway; it was held that the company were liable to be rated for the same, but that the rate should be ascertained in the following manner:

From the estimated value of the docks should be deducted the value of such portions as gave to the company an income arising from dock dues and the like, so as only to charge them with expenses relating to the maintenance and repair

(*a*) See *The Eastern Counties Ry.*, 32 L. J. M. C. 174; 4 B. & Ry. v. *Great Amwell*, 8 L. T. S. 58.
119; *S. C.*, *R. v. Eastern Counties*

of the docks, locks and wharves, the hydraulic apparatus, and the pay of the staff employed in and about the admission and dispatch of vessels; and if the receipts were not equal to the expense, the company should only be rateable for this land according to its unimproved value, the other receipts in the docks being brought into the company's railway account: *The Manchester, Sheffield & Lincolnshire Ry. Co. v. The Caistor and Gleanfroid Brigg Unions*, 32 L. T. 264; the Railway Commissioners' Court (a). See *R. v. The Rhymney Ry. Co.*, 38 L. J. M. C. 75; 10 B. & S. 198.

Where there is a much heavier expense in one parish, in Local consequence (for instance) of coal mines being in the parish expenses, which cause a larger expenditure in maintaining the permanent way than in other parishes where there are no coal mines; in assessing the assessable value of the railway in such parish the proper deduction for expenses of the permanent way was to be treated as a local expense in that parish regardless of the average cost along the whole line of railway: *London and North-Western Ry. v. Harborne*, 34 J. P. 644; see *The Coventry Canal Case*, 1 E. & E. 572; 28 L. J. M. C. 102; *Great Eastern Ry. v. Haughley*, 35 L. J. M. C. 229; L. R. 1 Q. B. 166; 7 B. & S. 624; 14 L. T. 548; *London and North-Western Ry. v. Kings Norton*, 34 J. P. 102.

The parish authorities are authorized to take into con- Branch sideration, in assessing the annual value of a branch line, lines, the fact that other companies are willing to pay a large rent as an element in ascertaining the rent which a yearly tenant would give for it: *R. v. The London and North-Western Ry. Co.*, 43 L. J. M. C. 81; L. R. 9 Q. B. 134; 29 L. T. 910.

Branch lines rented by the principal company although worked *per se* at a loss are rateable. The occupation is still beneficial; and the expenditure is more like money laid out as an improvement for which no deduction should be made: *R. v. Great Western Ry.*, 6 Q. B. 179; 15 L. J. M. C. 80; *R. v. Goldington*, 43 L. J. M. C. 81.

The value of railway stations is enhanced to some extent Railway stations.

(a) This judgment of the Railway Commissioners, carefully and elaborately prepared, materially interferes with the principles laid down by the Court of Q. B. and which for some years have been the recognized principles for the rating of railways.

The rule as laid down by the Commissioners would not probably be recognized by the Q. B. D. as overruling their previous authorities. The ultimate result of the appeal would then rest with the particular court having to decide it.

by their being connected with earnings of the railway: *R. v. Eastern Counties Ry.*, 32 L. J. M. C. 174; *R. v. Mile End Old Town*, 10 Q. B. 208; 16 L. J. M. C. 184; recognized and explained in *R. v. West Middlesex Waterworks*, 28 L. J. M. C. 135.

Not rate-
able on
value of
adjoining
land.

The railway is not to be assessed in accordance with the value of the adjoining land: *R. v. Manchester S. Junction and Altrincham Ry. Co.*, 15 Q. B. 396, n.

As to the rateable value of a railway station, see *R. v. Sherard*, 33 L. J. M. C. 5.

Running
powers.

The value of having the right to running powers over another line out of the rating parish should be taken into consideration in fixing the value of the line in the parish, although no toll was paid in respect of the right. The line was enhanced in value and the company held rateable; and that the rate ought to be made on the principle of assessing the profits made in the parish, enhanced by the right to run free over the line: *Great Western Ry. Co. v. Badgworth*, 36 L. J. M. C. 33; L. R. 2 Q. B. 251; see *Midland Ry. Co. v. Badgworth*, 34 L. J. M. C. 25.

Tolls paid to another company on passenger traffic passing over their line in other parishes should be deducted to get the net value: *R. v. St. Pancras*, 3 B. & S. 810; S. C., *North London Ry. v. St. Pancras*, 32 L. J. M. C. 146.

Tramways.
33 & 34
Vict. c. 78.

In assessing tramways under the Tramways Act, 1870, the annual gross receipts for traffic earned over the entire system will be taken as the basis of the estimate of the rent, and the net receipts in each parish as the criterion of the rateable value in each parish: *London Tramways Co. v. Lambeth* (Edlin, Q.C., Assistant Judge, Middlesex Sessions), 31 L. T. 319; see *Pimlico Tramway Co. v. Greenwich*, L. R. 9 Q. B. 9; 43 L. J. M. C. 29; 22 W. R. 87, in which it was held that the owners of tramways are rateable to the poor rate, although the public still continue to use the surface of the rails as part of the highway.

In rating a tramway, the general expenses, except horse expenses, should be allowed proportionably to the number of car miles run over in each parish of the service route. And the fairest apportionment of the receipts would be by dividing the receipts from each district in proportion to the lineal mileage of such route in each parish: *London Tramways Co. v. Lambeth*, 31 L. T. 319.

Canals.

Under the Regulation of Railways Act, 1873, 36 & 37 Vict. c. 48, s. 3, "the term 'canal' includes any navigation which has been made under, or upon which tolls may be

levied by, authority of Parliament, and also the wharves and landing-places of, and belonging to, such canal or navigation, and used for the purposes of public traffic ;"—“and the term ‘canal company’ includes any person being the owner or lessee of or working, or entitled to charge tolls for the use of any canal.”

For rating purposes the canal will be treated as no more than a road covered with water, and rateable as land at the lower amount : *R. v. The Neath Canal Co.*, 40 L. J. M. C. 193 ; L. R. 6 Q. B. 707.

Canal tolls, *eo nomine*, are not rateable ; but the subject-matter out of which the toll arises being one mentioned in the statute, namely, land, as the object of a rate, then the canal may be rated by name, and the tolls which constitute its profit may thus be made to contribute to the relief of the poor and the canal company be rateable in respect of the land they occupy in every parish through which the canal passes, and for that value which the land there produces. The tolls *eo nomine* not rateable.
Rateable in each parish the canal passes through.
The traffic in some parishes may be greater than in others, or the rates may be unequal, and thus the net profits, which constitute the value of the land used for the canal, may vary in different parishes, the rate must then vary in proportion : see *per* Bayley, J., *R. v. Kingswinford*, 7 B. & C. 237 ; and that learned judge, in *R. v. The Oxford Canal Co.*, said, “The company are rateable in each parish for the net annual profit of the portion of the canal lying in the parish ; in other words, for what the canal in each parish earns.” See also *R. v. Lower Mitton*, 9 B. & C. 810 ; *R. v. Milton*, 3 B. & Ald. 112 ; *R. v. Palmer*, 1 B. & C. 546 ; *Trent and Mersey Navigation Co.*, 1 B. & C. 545. This principle was followed in the judgment in *R. v. The London and South-Western Railway*, 1 Q. B. 558 ; 11 L. J. M. C. 93 : see also *The Brighton, South-Eastern, and Midland Railway Companies’ Cases*, 15 Q. B. 313 ; 20 L. J. M. C. 124.

The principle of *R. v. Kingswinford* was again recognized by Lord Denman in *R. v. Woking*, 4 A. & E. 40 ; but inasmuch as the earnings through trade was one gross sum for the whole line, and all parts were equally profitable, the rate would be in the mileage calculation with reference to the whole distance. See *R. v. Stafford and Worcester Canal Co.*, 8 T. R. 340 ; *R. v. The Earl of Portmore*, 1 B. & C. 551 ; *R. v. Hull Dock Co.*, 18 Q. B. 325 ; 21 L. J. M. C. 153 ; *R. v. The Bristol Dock Co.*, 1 Q. B. 535 ; 1 G. & D. 76.

In *R. v. The Coventry Canal Co.*, 28 L. J. 102—104,

Lord Campbell pointed out the difficulty of applying the Parochial Assessment Act to canals and railways passing through many parishes, and the courts were driven to dispose of all those cases in the best way they could.

Expense of
locks not
to be
deducted.

It was, in that case, held that the expense of maintaining locks in a parish was not to be deducted from the gross earnings of the canal in the parish, as it was not a local cost, but ought to be thrown on the whole line of canal.

Rate in
like
manner as
other lands.
*R. v. Leeds
and Liver-
pool Canal
Company.*

By the private Acts of the canal navigation from Leeds to Liverpool authorized to make the canal and charge tolls, it was provided that the company should be assessed for their property "in like manner as lands of a like quality, and as dwelling-houses, &c., of a like and similar size, &c., in the respective parishes, &c., where the same should be situate or should be assessed or charged. It was held:—

1. That the land occupied by the canal basins and towing-paths, being part of the original, was to be rated according to the general value borne at the time of the rate by land immediately adjoining, including the value the land derived from its vicinity to a canal.

2. That land occupied by cuts and basins not being in a prescribed line was to be rated on the same principle.

3. That wharves and quays adjacent to the cuts and basins were to be rated as similar property adjacent, including the value which such property derived from their vicinity: *R. v. The Leeds and Liverpool Canal Co.*, 7 A. & E. 671; 7 L. J. M. C. 41; Local Act, 59 Geo. 3, c. cv. s. iv.; *The Glamorganshire Canal Co. v. St. Mary, Cardiff*, 29 L. J. M. C. 238; 2 L. T. N. S. 694; 3 E. & E. 186.

Under a similar provision in a Local Act, 52 Geo. 3, c. cxv., s. ci., it was held that the land occupied by the canal was to be rated as open land which never could be built upon, but which might perhaps have some enhanced value from its proximity to the canal and adjoining buildings as applicable to any purpose except building purposes: *The Regent's Canal v. St. Pancras*, 3 Q. B. D. 73; 47 L. J. M. C. 37. See also *R. v. The Grand Junction Canal Co.*, 1 B. & Ald. 289; *Regent's Canal Co. v. Hendon*, 6 E. & B. 852; 3 Jur. N. S. 208. And see *The Grand Junction Canal Co. v. Hemel Hempstead*, and *same v. Kings Langley*, L. R. 6 Q. B. 173; 40 L. J. M. C. 25; 42 L. T. 228, in which *R. v. G. J. Canal Co.*, 7 W. R. 597, and the *Glamorganshire* case (*supra*) are discussed.

Water-
works.

In the recognized leading case on the rating of waterworks: *R. v. Mile End Old Town*, 10 Q. B. 210; 16 L. J. M. C. 184,

the East London Waterworks Company was possessed of works situate in several parishes consisting, first, partly of works *directly* productive of profit, being service-pipes which Service-delivered the water to the consumer, and, secondly, partly of pipes. works *indirectly* producing profit, as the buildings, mains, reservoirs, &c., which assisted in bringing the water to the service-pipes. The net annual rateable value of the entire works was estimated at £30,800. The second portion was rated in the ordinary way by valuing the land with the buildings and fixtures thereon, and the amount of rate so ascertained was deducted from the sum of the rateable value, and distributed to the districts in which the parts of this portion were situated. An analogous course was adopted for railways in *R. v. The London and South-Western Ry. Co.*, *R. v. The Grand Junction Ry. Co.*, and for gas companies, *R. v. The Cambridge Gas Co.* Also, the spring, which in-Spring. directly conduced to the ultimate profit by water-rate, was held rateable in the parish where it was situate, in *R. v. The New River Co.*, 1 M. & S. 503, the quantum of the rate being left to the sessions.

The reservoirs will be assessed as land, independently of Reservoirs. their contributing to the earnings of the canal: *The Birmingham Canal Navigation Co. v. Birmingham*, 19 L. T. 311 (a).

The remaining step was to apportion the residue of the rateable value among the districts in which the direct productive portion of the works was situate, in the ratio either of the net profits or of the gross receipts, or of the quantity of mains and pipes, and of the land occupied by the company in each district, each ratio giving the same result. If they differed it would be necessary to make a selection between them, and that ratio should be preferred which would best show the rent to be expected if the part of the works situate in the district were let separately. It was clear the net profits in each parish would be the best criterion of such rent, and they would therefore give the proper ratio. It is also clear that the ratio of the gross receipts and earnings in the several districts to each other will be the same as the ratio of the net profits in those districts to each other in all cases where the total expense is taken to be common to the whole apparatus, and deducted from the total of receipts in the progress of ascertaining a rateable value. For in such

(a) Mr. W. C. Glen writes of this case: "It is not easy to determine the point actually decided from

the report." Lumley's "Law of Parochial Assessment," p. 126.

case the net profits in each district would be ascertained by distributing the expense among the several districts, and it would be distributed in the ratio of the gross receipts in each; and if a proportional deduction should be made from the gross receipts in each, the ratios of the remainder to each would be the same as the ratio of the gross receipts. As any attempt to ascertain the net profits in each district in any other way would lead to minute and inconvenient inquiries in practice, the ratio of the gross receipts should be adopted, as being an index of the net profits, when the rateable value is ascertained. We think that an apportionment in this sense, according to the gross receipts, is in accordance with the decisions which have apportioned the sum of rateable value from a railway or canal according to the length of line in each parish. See *R. v. Kingswinford*, 7 B. & C. 256; *R. v. Woking*, 4 Ad. & E. 40. Where the profit arises from transit, the line of the canal or railway is *directly* productive of the profit, and the reservoirs, warehouses, stations, &c., *indirectly* conduce to such profit. Each portion of the line earns an aliquot portion of the profit, and if equal portions of one line, carrying at one rate, could be conceived to be let separately, no one portion would be let at a higher rate than the other, and an apportionment of a sum of rateable value, according to the length of the line in each parish, would be according to the rent to be expected for that part of the line. In the case of water companies, where the profit arises from the delivery of the water at a given place, the previous transit being immaterial to the consumer, the service-pipes immediately produce the profit, and the agency by which the water reaches those pipes indirectly conduces to such production. If the service-pipes in each parish could be let separately, the water being assumed to be sold at the same price throughout, the criterion of the rent would be found in the gross receipts, which would depend on the number and diameter and level of the service-pipes in each parish, and an apportionment according to the gross receipts in each district would be according to the rent to be expected from the part of the rateable subject situate in such district. This apportionment is not at variance with the grounds of the judgment in *R. v. The Cambridge Gas Co.* By the method adopted in this case, the rateability of the portion of the apparatus indirectly conducing to produce profit is provided for, and the residue of the sum of rateable value is apportioned to those parts of the apparatus directly producing profit in analogy to the mileage proportion for canals

and railways : see also *R. v. The West Middlesex Waterworks Co.*, 28 L. J. M. C. 135 ; 1 E. & E. 716 ; *The Chelsea Waterworks Co. v. Putney*, 29 L. J. M. C. 236.

A watercourse in connection with mining operations is to be rated at its enhanced value in reference to the mine : *Tarlagoch Mining Co. v. St. Asaph*, 37 L. J. M. C. 149.

Commissioners under a local Act erected waterworks, from whence they supplied a township. All the money raised by them was to be applied to the purposes of their Acts ; and as soon as the mortgage debts should be paid off, the water rents were to be reduced, so that the proceeds should only cover the current expenses of executing the powers of their Acts. It was found in the case that no tenant could pay any rent for the works under the restrictions ; but it was held that such restrictions had no bearing on the reduction of the rate : *R. v. Longwood*, 21 L. J. M. C. 215 (see also the *Mersey Docks cases*, *infra*).

Although, as before stated, profits of trade are not to be Gas com-
rated, in finding the rateable value of gasworks, in *R. v. The panies*.
Sheffield Gaslight Company, 32 L. J. M. C. 169, 172 ; 4 B. & S.
135, the gross annual receipts for the sale of the gas and residuary products and for hire of gas-meters and fittings and work done, were taken from the last published accounts of the company, and from those gross receipts the net receipts were obtained by deducting the gross expenditure, and a fair sum for tenant's profits, interest on capital, rates and taxes, cost of renewal, repairs, insurances, and renewal, of plant and mains ; the sum remaining being taken as a true estimate of the net annual value of the works of the company. From this *net* value was deducted a sum on account of the net rateable value of the stations, works, and buildings lying in the rating township, and contributing indirectly to the profits rateable only to the poor within the township in which they lay ; the remainder, after this last deduction, being distributed among the several townships into which the mains extended, by apportioning to each of them so much as represented the extent of the mains they contained. The sum thus apportioned was added to the rateable value of the stations, &c., and land, and the total of the two sums was taken to be the net annual value of the several hereditaments belonging to the company, and lying within the township. Blackburn, J., in giving the judgment of the court, said :—" As to the mode at which the respondents have arrived at the value of the entire subject, it seems to us that if the proper allowance for the expenses and for tenants' profits and interest on

Tenants' profits a question of fact.

capital has been made, and the proper value has been put upon the stations, works, and buildings, &c., a proper mode has been adopted for obtaining the rateable value of the remaining property." We think that what is left after these allowances is the rent which the hypothetical tenant—to adopt the phrase used in *R. v. The West Middlesex Waterworks Company*, 1 E. & E. 716 ; 28 L. J. M. C. 135—would give for the rest of the apparatus. The proper rate to be allowed for tenants' profits and interest on capital is entirely a question of fact, and should be ascertained by the sessions or arbitrator as a fact. The principle on which the stations, works, buildings, &c., are to be valued as laid down in *R. v. Mile End Old Town*, 12 Q. B. 208 ; 16 L. J. M. C. 184 ; and *R. v. West Middlesex Waterworks Company*, is, that they are to be valued as fixed property, deriving some additional value from their capacity of being used as part of the gasworks, a rule which in practice it is found not difficult to apply, though it is not theoretically very definite. The mains and pipes must be considered, as in *R. v. The West Middlesex Waterworks Company*, as directly, and in part as indirectly, contributing to the profits. That case gives an exposition of the Parochial Assessment Act, and which was considered practically impossible to carry out satisfactorily. The rule was drawn up that the method to be adopted was to apply the principles as explained in *R. v. The West Middlesex Waterworks Company*, as reported in 1 E. & E. 716.

Machinery of gas-works. See post, p. 423.

The question still is, "What will a tenant be willing to give for the gasworks to carry on the same business?" *R. v. The Birmingham Gas Company*, 1 B. & C. 506 ; see *R. v. Cambridge Gas Company*, 8 A. & E. 723.

The retorts, purifiers, steam-engines, boilers, and moveable parts of gas-holders appear to be attached to the inheritance for the permanent improvement of the works,—*pour un profit del inheritance*,—and being absolutely essential for the working the manufactory, are considered as part of the gasworks, and included in the value of the premises for the purpose of rating: *R. v. Lee, Inhs.* 35 L. J. M. C. 105 ; L. R. 1 Q. B. 241 ; see also *Lainy v. Bishop Wearmouth*, 47 L. J. M. C. 41 ; 3 Q. B. D. 299 ; 26 W. R. 357.

Docks.

Similar principles are applicable to the rating of docks as those which relate to railways or canals.

Where the docks are in the occupation of a corporation board established under an Act of Parliament for public purposes, there is no exemption from rateability. See *Jones v. The Mersey Docks and Harbour Co.*, 11 H. L. C. 443 ;

35 L. J. M. C. 1. And where there are no shareholders or persons deriving any personal advantage or emolument whatever from the money received by the board, the corporation is not entitled to deduct a sum for tenants' profits in addition to the cost of collecting the rates: *The Mersey Docks and Harbour Co. v. Liverpool*, L. R. 9 Q. B. 84; 43 L. J. M. C. 33.

Warehouses, workshops, sheds, &c., which are connected with the docks, but which are capable of an independent and separate beneficial occupation, are rateable at the enhanced value which a tenant from year to year would be expected to give for them: *The Mersey Docks and Harbour Board v. Birkenhead*, L. R. 8 Q. B. 445; 42 L. J. M. C. 141; 29 L. T. 454; 21 W. R. 913; *Newport Dock Co. v. Newport Board of Health*, 2 B. & S. 708. Dock ware-
houses
capable of
independ-
ent occu-
pation.

As to the rating of buildings belonging to the docks let for the accommodation of storing goods, where the board has not parted with the exclusive occupation, see *Allan v. Liverpool Overseers*, and *Inman v. Kirkdale Overseers*, L. R. 9 Q. B. 180; 43 L. J. M. C. 69; 30 L. T. 93; 22 W. R. 330. Dock
buildings.

Docks are rateable as land covered with water, and should only be assessed for such dues and tolls as are paid for the actual user of the docks; and not for dues paid by way of compensation for the docks without user. See *R. v. The Bristol Docks Co.*, 1 Q. B. 535; *R. v. The Hull Dock Co.*, 7 Q. B. 2; 14 L. J. M. C. 114. Dock tolls.

Where docks, belonging to one company, are situate in separate parishes on different sides of the river, they are to be separately rated: see *The Mersey Docks and Harbour Board v. Liverpool*, L. R. 7 Q. B. 643; 41 L. J. M. C. 161; 20 W. R. 827; 26 L. J. 868—*ante*, p. 391; and which may be distinguished from the *Hull* and *Bristol Docks* cases (*supra*). See as to where a farm is situate in separate parishes, *ante*, p. 390; or mines, *post*, p. 421. Docks in
several
parishes.

The Rating Act, 1874, 37 & 38 Vict. c. 54, s. 3, extends the Poor-Rate Acts to mines of every description, not mentioned in the statute of 43 Elizabeth c. 2, s. 1, which applied solely to coal mines. All mines
rateable.

Under s. 7 of the Act 1874, where a tin, lead, or copper mine is occupied under lease granted without fine on a reservation wholly or partly of dues or rent, the gross value of the mine shall be taken to be the annual amount of the whole of the dues payable in respect thereof during the year ending on the 31st December preceding the date at which the valuation list is made, in addition to the annual amount Gross and
rateable
value of the
lead and
copper
mines.

of any fixed rent reserved for the same which may not be paid or satisfied by such dues.

The rateable annual value of such mine shall be the same as the gross value thereof, except that where the person receiving the dues or rent is liable for repairs, insurance, or other expenses necessary to maintain the mine in a state to command the annual amount of dues or rent, the average annual costs of the repairs, insurance, and other expenses for which he is so liable shall be deducted from the gross value, for the purpose of calculating the rateable value.

In the following cases, namely,

1. Where any such mine is occupied under a lease granted wholly or partly on a fine ; and,
2. Where any such mine is occupied and worked by the owner ; and,
3. In the case of any other such mine which is not excepted from the provisions of this Act, and to which the foregoing provisions of this section do not apply,—

the gross and rateable annual value of the mine shall be taken to be the annual amount of the dues, or dues and rent, at which the mine might be reasonably expected to be let without fine, on a lease of the ordinary duration, according to the usage of the country, if the tenant undertakes to pay all tenant's rates and taxes, and tithe rent charge, and also the repairs, insurance, and other expenses necessary to maintain the mine in a state to command such annual amount of dues, or dues and rent.

Who to be
rated as
occupier
of mine.

The purser, secretary, and chief managing agent for the time being of any tin, lead, or copper mine, may be rated as the occupier.

Definitions.

The term "mine," when under lease, includes the underground workings, engines, machinery, workshops, tramways and other plant, buildings (not being dwelling-houses), and works of the surface-land occupied in connection with and for the purposes of the mine, and situate within the boundary of the land comprised in the lease under which the dues, or dues and rent, are payable or reserved (a) :

"Dues" mean royalty, or toll, either in money or partly in money and partly in kind ; and the amount means the value thereof :

(a) Whether an excavation in the earth be a mine or not depends on the mode of working and not on the substance obtained : *R. v. Dunsford*, 2 A. &

E. 568 ; 4 L. J. M. C. 59 ; *R. v. Brettle*, 3 B. & Ad. 424 ; *R. v. Sedgley*, 2 B. & Ad. 65 ; *R. v. Westbrook*, 10 Q. B. 178.

"Lease" means lease or sett, licence to work, agreement for a lease or sett, or licence to work :

"Fine" means fine, premium, or foregift, or other payment or consideration in the nature thereof.

Where any poor or other local rate which, at the com-
mencement of this Act any lessee, licensee, or grantee of a
mine is exempt from being rated to in respect of such mine,
becomes payable by him in respect of such mine during the
continuance of his lease, grant or licence, or before the arrival
of the period at which the amount of the rent, royalty, or
dues is liable to revision or readjustment, he may (unless he
has *specially* (a) contracted to pay such rate in the event of
the abolition of the said exemption) deduct from any rent,
royalty, or dues payable by him one half of any such rate
paid by him ; but he shall not deduct any sum exceeding
what one half of the rate in the pound of such poor or other
local rate would amount to if calculated upon the rent,
royalty, or dues so payable by him ; sec. 8, Act 1874 (b).

Deductions
by tenant
of a mine.

By sec. 13 nothing in the Act shall apply to a mine of
which the royalty or dues are for the time being wholly
reserved in kind, or to the owner or occupier thereof.

Dues re-
served in
kind.

Prior to this Act it was not unusual for the lessors to
reserve to themselves part of the ore as the consideration or
toll in kind for the working the mine ; in such case they
were held to be rateable as occupiers of so much land : *R.*
v. Tremagne, 4 B. & Ad. 162 ; but they were not rateable if
the ore was smelted : *R. v. Earl Pomfret*, 5 M. & S. 179.
The distinction was pointed out by Le Blanc, J., in *R. v.*
The Baptist Mill Co., 1 M. & S. 612, "where a person receives
without risk part of the produce extracted from the bowels
of the earth, he is an occupier of the land ; but where he
merely receives a rent or money payment, he is not an
occupier." See *R. v. The Bishop of Rochester*, 12 East, 353.

In *R. v. Todd*, 12 A. & E. 816, the Duke of Cleveland had
reserved one-fifth part of the ore which should be gotten out

(a) A lease of an iron mine
provided for the payment of the
rent "free and clear of and from
all rates, &c., whatsoever, parlia-
mentary, parochial, or otherwise,
or of any nature." After the
passing the Rating Act, 1874, it
was held that this was not a
"specific" contract to pay the
poor-rate in the event of the
possible abolition of the exemp-

tion of the mine from rating :
The Duke of Devonshire v. The
Barrow Hematite Steel Co., 2
Q. B. D. 286 ; 46 L. J. Q. B. 435,
C. A.

(b) By sec. 9 any payments
made under sec. 8 are a discharge
for so much rent ; and by sec. 10
the Act is applicable to local
rates.

of the demised premises cleansed, dressed, and made merchantable and fit *for the smelting-mill*, at the cost of the lessees. The Duke was held to be the occupier of the ore, and rateable. See also *R. v. St. Austell*, 5 B. & Ald. 693; *Van Mining Co. v. Llanidloes (Overseers)*, 45 L. J. M. C. 138; 1 Ex. D. 310.

Unproductive mine.

It was held in *R. v. Bedworth*, 8 East, 387, that where a mine had ceased to be productive, the mine having become exhausted, and the subject-matter of profit gone, the lessor was only rateable for the annual value during the period for which the rate was made; and when the thing which was occupied no longer afforded concurrent value, the subject-matter of the rating was gone.

When *R. v. Bedworth* was cited in *Staley v. Castleton (Overseers)*, as reported in 33 L. J. M. C. 178, 180, Blackburn, J., remarked, "that case is not law at the present time" (a) (which *obiter dictum* is not reported in (S. C.)), 5 B. & S. 505); and it was held that the owner of a cotton-mill, which was not kept in work owing to depression of trade, was still liable to be rated for the value not as for the mill, but as for the building used as a warehouse for storing the machinery therein: see *Harter v. Salford*, 6 B. & S.; 34 L. J. M. C. 206; *Staunton v. Powell*, 1r. R. 1 Com. L. 182; *The Attorney-General v. Earl Sefton*, 32 Ex. 230, in which last case (Martin, B., dissenting), it was held that land not capable of being used for building, agricultural or other present purposes, was not liable to succession-duty. So in *R. v. The Grand Junction Ry. Co.*, 4 Q. B. 18; 13 L. J. M. C. 94, Lord Denman pointed out that the rate was to be on the occupier in respect of the beneficial nature of his occupation, in ascertaining which *all the existing circumstances*, whether permanent or otherwise, would reasonably influence the negotiation for the tenancy at a rental.

The present value rateable.

And as Cockburn, C. J., in giving judgment in *R. v. Fltton*, 30 L. J. M. C. 89—94, said: The true principle, according to which the value of the occupation to the hypothetical tenant contemplated by the Parochial Assessment Act is to be estimated, is, to assume the continuance of those circumstances which constitute the value to the existing occupier, unless it be made to appear that those circumstances are about to undergo a change, or, in the language of Byles, J., "the statute by adopting the supposed tenancy

(a) But while the unused mill house, the unworked mine would might be available as a warehouse, be valueless.

from year to year seems to exclude a valuation of distant future advantages or disadvantages of the property demised, and to regard its actual condition at the time of the rate, or, at farthest, in the immediate future ;” see also *Sunderland Parish v. Sunderland Union*, 34 L. J. M. C. 121, Erle, C. J., 127.

These cases do not appear to conflict with *R. v. Bedworth*, *R. v. Bedworth* supported. but rather support the principle there laid down by Lord Ellenborough. So in *The Tyne Coal Co. v. Wallsend*, 46 L. J. M. C. 185, where the coal mine had become unproductive by being “drowned out,” it was held that though the surface-lands were rateable, the owner and occupiers of the coal mine were not rateable for the buildings, engines, plant, &c., as those were only adjuncts to and part of a valueless colliery, and were not shown to have any independent value : Lord Coleridge, C. J.

Where a mine is being worked, the court will not inquire whether an unprofitable bargain has been made by the lessors, *R. v. Parrott*, 5 T. R. 593 ; so though the expenditure of docks exceeded the dues received, *R. v. Hull Dock Co.*, 5 M. & E. 394. The case did not state that the property, *communibus annis*, was not productive of profit : *ib.* Bayley, J. But these decisions seem barely consistent with *Clerk v. The Alderbury Union Committee*, 50 L. J. M. C. 33, where on an appeal against a poor-rate evidence was held to be admissible, to show that the sums received and paid for provisions, salaries, &c., in carrying on the business of a refreshment-room at a railway-station, was in fact carried on at a loss : see *ante*, p. 387.

Where a coal mine lay under two parishes, A. and B., and was so worked ; but the coal was brought to bank by one shaft in A. parish, the owner could not be rated in A. for coal gotten in B. : *R. v. Foleshill*, 4 A. & E. 593 ; 4 L. J. M. C. 63. See *supra*, pp. 391, 417.

Under the statute 43 Eliz. c. 2, s. 1, the occupier of saleable underwoods was rateable to the poor-rate ; so much of that section is repealed by sec. 14 of the Rating Act, 1874 ; and by sec. 3 of that Act the Poor Rate Acts are to extend to land used for a plantation, or a wood, or for the growth of saleable underwood, and not subject to any right of common. By sec. 4, the gross and rateable value of such land shall be estimated as follows :—

If the land is used only for a plantation, or a wood, the value shall be estimated as if the land, instead of being a plantation or a wood, were let and occupied in its natural

Where
mine
worked
occupier
rateable.

Mine under
two
parishes.

Saleable
underwood.

and unimproved state. See *Eyton v. Wood*, 45 J. P. 54; 43 L. T. 472.

If the land is used for the growth of saleable underwood, the value shall be estimated as if the land were let for that purpose;

If the land be used both for a plantation or a wood, and for the growth of saleable underwood, the value shall be estimated either as if the land were used only for a plantation, or a wood, or as if the land were used only for the growth of the saleable underwood growing thereon, as the assessment committee may determine.

And by sec. 5, where the rateable value of any land used, as above mentioned, is increased by reason of the same being estimated in accordance with the Act, the occupying tenant may deduct from his rent any rate paid by him in respect thereof.

Meaning of "saleable underwood." "Saleable underwood" means wood destined for sale; and is not confined to wood then in a fit state for sale: *R. v. Mirfield*, 10 East, 219. But whether the woods are within the meaning of saleable underwoods under the statute, is a question for the sessions to determine: *R. v. Narberth North*, 9 A. & E. 815; 8 L. J. M. C. 46.

Treatment of wood the criterion. The nature of the tree forming the wood or plantation is immaterial; the mode of treatment will determine whether it is rateable as saleable underwood; and may be also determined by the custom of the country: see *Lord Fitzhardinge v. Pritchett*, L. R. 2 Q. B. 135; 8 B. & S. 216; 36 L. J. M. C. 49; *R. v. Narberth North* (*supra*); *R. v. Ferrybridge*, 9 A. & E. 815, Holroyd, J., said:—"The general subject of the rate in the statute of Elizabeth is property yielding renewable profits. Underwoods cut at stated periods do yield a succession of profits from time to time, though not annually. This (a fir and larch plantation) is clearly not wood of that description; for when it is once cut, the root is destroyed, and there is no succession of profits. In order to ascertain whether these be saleable underwoods, the object for which they were planted, and the mode of management, ought to be taken into consideration."

Rateable in *communibus annis*. In *R. v. Narberth North*, Coleridge, J., said "he was not satisfied with the definition of saleable underwoods to be found in the cases. It was not so much the object for the plantations, but the mode of treatment which he considered to be the real question. If," he remarked, "the underwoods are in their nature renewable, and capable, under proper management, of yielding a succession of profits at stated

intervals of time, they are rateable. And they are rateable *in communibus annis*, although the actual profit is only made when the wood is cut down at intervals of years, still the wood is constantly in a progressive state towards the producing the profit, and annually improving in value; the rates payable are on that improvement": *per* Lord Ellenborough, in *R. v. Mirfield* (*supra*).

The average annual net profit of the particular description Farm of land to be rated is the sum at which the rate should be ^{lands.} assessed. The rate should be at the same sum as lands of a similar quality in the same parish produce. Where there is some particular expense attachable to one farm which is not sustained by another, as where a farm is liable to be flooded, and is protected by a rate in the nature of a sewers-rate, thereby reducing the average net annual profit, the rate should be made accordingly. So where the subject of the occupation is of a perishable nature, or requires an annual expense to secure its existence, an allowance ought to be made on this account, for the total annual profit is not then the net annual profit; a part must be set aside for the restoration and maintenance of the subject of the occupation. It is on this principle that buildings have been permitted to be rated at less in proportion than arable or other land. The principle of the decisions has established the rule of rating to be, that all lands are to be assessed in proportion to the net rent which a tenant at rack rent would pay, he discharging all rates, charges and outgoings: *R. v. Adames*, 4 B. & Ad. 61; 1 Nev. & M. 162: see *R. v. Mirfield*, 10 East, 219.

Where machinery is attached to a building, the house Machinery must be valued in respect to the increased value derived attached to from such machinery: *R. v. Birmingham Gaslight Co.*, 6 A. & E. 634; 6 L. J. M. C. 92; *R. v. Haslam*, 17 Q. B. 220; *R. v. Guest*, 7 A. & E. 956; *R. v. Liverpool Exchange*, 1 A. & E. 465; *R. v. Southampton Dock Co.*, 14 Q. B. 587; 20 L. J. M. C. 155; *The Metropolitan Board of Works v. West Ham*, L. R. 6 Q. B. 193; 40 L. J. M. C. 20; 23 L. T. 490; see also *R. v. Gloucester*, Cald. 262.

As to machinery in a ship-yard, see *Laing v. Bishopwearmouth*, 3 Q. B. D. 299; 47 L. J. M. C. 41; 27 L. T. 781; 26 W. R. 351: Tanks in a distillery, see *Chidley v. West Ham*, 32 L. T. 486: Pumps used for pumping out water from an unproductive coal mine, *The Tyne Coal Co. v. Wallsend Overseers*, 46 L. J. M. C. 185; see also *Halliwel v. Halstead*, 21 J. P. 373.

Where from depression of trade the owners of a cotton

mill ceased work, but employed a person to look after the machinery and keep it in repair, the owner was held liable to be rated as for a warehouse for the machinery, and not as a "mill": *Staley v. Castleton*, 33 L. J. M. C. 178; 10 Jur. N. S. 1147; *Harter v. Salford*, 34 L. J. M. C. 206; 6 B. & S. 591.

Every thing which is merely a chattel, and would not pass under a demise from the actual or imaginary tenant, should be excluded from consideration in assessing the rateable value: see Cockburn, C. J., in *R. v. Lee (Ink.)*, L. R. 1 Q. B. 241; 35 L. J. M. C. 105.

Empty
premises.

In *Harter v. Salford*, 34 L. J. M. C. 206-208, Crompton, J., is reported as saying, "that when premises are practically unlettable they are not rateable; but if the owner does not choose to let them, but holds out for a higher rent, that will not prevent his being liable to be rated at what may be found to be a fair rent." In that case, however, there was a beneficial occupation—as in *R.*, or *Staley v. Castleton*, 33 L. J. M. C. 178; 5 B. & S. 505; and see *Staunton v. Powell*, Ir. R. 1 C. L. 182—by the user of the premises or mill, as a warehouse for the unemployed machinery.

Houses
recently
built but
unoccu-
pied.
The Union
Asst. Act,
1862,
ss. 14, 20,
25.

In the subsequent case, *Maldon v. Kingston Union*, 38 L. J. M. C. 125; L. R. 4 Q. B. 326; S. C., *R. v. Maldon*, L. R. 4 Q. B. 326, decided in the Union Assessment Act, 1862, 25 & 26 Vict. c. 103, by which a supplemental valuation list is directed to be made whenever fresh property becomes "rateable," as houses newly finished and ready for occupation. It was there held that the word "rateable" referred to the quality of the property and not to the occupation; and whether the premises were occupied or not could make no difference. *R. v. Hammersmith*, 33 L. T. 183, was considered a binding authority on the point, where it was decided that unoccupied houses were rateable to the county rate, under 15 & 16 Vict. c. 81, ss. 2, 6, the words creating the liability being hereditaments "*rateable to the poor.*"

The Union
Asst. Act,
1868, s. 38.

Under the enactment in the Union Assessment Act, 1868, s. 38—Where a person occupies any new house or other building which was incomplete, or not fit for occupation, or not entered in the valuation list at the time when the current rate for the time being was made, the overseers may enter such house or building with the name of the occupier, and the date of the entry in the rate-book, and require him to pay such amount as in their judgment shall be proper, having regard to the rateable value of the house, &c., and the time which may have elapsed from

the making the current rate to the date of such entry, and the person so charged will be considered as actually rated from such date, and be liable to pay the sum assessed in like manner, and subject to the like penalties of distress, and with the like power of appeal, as if he had been assessed when the rate was made.

The 12th s. of 17 Geo. 2, c. 38, now repealed by 32 & 33 Vict. c. 41, s. 16, made the tenant going out of a rated house, and the one coming in, liable to pay rates in proportion of their respective occupations; but the outgoing tenant remained liable to the payment of the current rate during the time the house remained unoccupied: *Edwards v. Rusholme*, 38 L. J. M. C. 153; 10 B. & S. 526; L. R. 4 Q. B. 554. Incoming and outgoing tenants.

By s. 16 of 32 & 33 Vict. c. 41, it was enacted, if the occupier assessed to the rate cease to occupy before the rate be wholly discharged, or the hereditaments being unoccupied at the date of the rate become occupied pending the rate, the overseer is to enter his name as occupier in the rate-book, with the date of his occupation, and from thenceforth he will be liable to pay so much of the rate as proportionate to the time between the commencement of his occupation and the expiration of the period for which the rate was made, "in like manner and with the like remedy of appeal as if he had been rated when the rate was made." And the outgoing occupier will remain liable for so much of the rate proportionate to the time of his occupation within the period for which the rate was made. The relief under this section applies only where there is an incoming occupier, and not where the premises are left unoccupied: *The Overseers of St. Werburgh, Derby v. Hutchinson*, 49 L. J. M. C. 23; 5 Ex. D. 14, and to relieve the outgoing, the incoming occupier must have been one liable to the payment of rates, and not a public institution exempt from rates: *Hare v. The Putney Overseers*, 50 L. J. M. C. 81. The Poor-Rate Asst. & Collec. Act, 1869, s. 16.

In consequence of the above cases—*The Overseers of St. Werburgh, Derby v. Hutchinson*, and *Hare v. The Putney Overseers*—The Poor-Rate Assessment and Collection Act, 1869, Amendment Act, 1882 (45 & 46 Vict. c. 20) was passed, and is to be read as one Act with that of 1869. The enactment overrules those cases. The Poor-Rate Asst. & Collec. Act, 1882.

Sec. 3 enacts that the provisions of the 16th sec. of the Act of 1869, so far as the payment of rates by an outgoing occupier, shall extend and apply to any outgoing occupier assessed in the rate, and such outgoing occupier

shall only be liable to pay so much of the rate as shall be proportionate to the time of his occupation within the period for which the rate was made, notwithstanding he may not be succeeded in his occupation by an incoming tenant. See Paterson's "Practical Statutes of 1882," note, p. 38.

Rating Small Tenements.

Sturges
Bourne's
Act (1819).

The substratum of rateability from the time of Queen Elizabeth has almost universally been occupation. It has only been in modern times that the Legislature—seeing that large quantities of small houses are occupied by persons of no great means, who are likely to change rapidly, as well as to occupy portions of houses only, and upon whom the rates are to some extent uncertain—has empowered the rating authorities, if they choose, to rate the owner instead of the occupier. And as by the preamble to Sturges Bourne's Act (1819), 59 Geo. 3, c. 12, we learn the object of that Act to be "to prevent the poor-rate from being evaded by letting out houses in lodgings or separate apartments, or for short terms, or to tenants who quit their residences, or become insolvent before the rates could be collected. And it had been found that in many instances the landlords had actually been receiving a higher rent from the tenant on the ground and expectation that the occupier could not be effectually assessed to the poor-rate, and did thus obtain an undue advantage to themselves, and by means of the premises the other inhabitants were unjustly compelled to pay much more than their fair and due proportions of their charges of relieving and maintaining the poor":—

Owners to
be rated.

By the 19th section of that statute (1819) the vestry may resolve and direct that the owner or owners of all houses, apartments, or dwellings in the parish, being the immediate lessor or lessors of the actual occupier or occupiers, which shall respectively be let to the occupiers thereof at a rent or rate not exceeding £20 or less than £6 by the year, for any less term than one year, or on any agreement by which the rent shall be reserved, or made payable at any shorter period than three months, shall be assessed to the rates for the relief of the poor, in respect of such houses, &c., instead of the actual occupiers. The churchwardens and overseers are required to carry into effect such resolution, and to assess at a fair and equal pound rate such owner or owners in respect of such houses, &c., according to the actual rent at which

every such house, &c., shall be let, after making a reasonable deduction from such rent, not exceeding in any case one-half of the same (a).

By sec. 21 in certain cases the person *receiving* the rent may be rated as the owner; as where the rent is received for a corporation, or the landlord is a minor or under disabilities.

Nothing in the Parochial Assessments Act, 6 & 7 Will. 4, c. 96, Act 1836 (see sec. 4) or the Union Assessment Committee Act, 1862 (see sec. 35), are to be construed to prevent the owners of tenements from compounding for the rates.

Under sec. 4 (Act 1836, *supra*) the gross estimated rental of the hereditaments compounded for are to be entered on the rate in the proper column. And the proper valuation is to appear in the valuation list like other rateable property; it is on the *rate* the deduction is to be made, and not the primary valuation: see *The Sunderland Overseers v. The Sunderland Union*, 18 C. B. N. S. 532. Estimated rental and valuation to be in list.

The section 19 (Act 1819, *supra*) has no application to houses let at a rent exceeding £20 or less than £6 a year: *Iles v. West Ham Union Committee*, 51 L. J. Q. B. 17, C. A.

Section 19 (Act 1819, *supra*), and similar provisions, may be considered as repealed as respects parishes within a parliamentary borough by 30 & 31 Vict. c. 102, s. 7.

By the Poor-Rate Assessment and Collection Act, 1869, 32 & 33 Vict. c. 41, s. 3, the owners of hereditaments may agree to pay the rates where the rateable value does not exceed twenty pounds in the metropolis; or thirteen pounds where the parish is situate wholly or partly within the borough of Liverpool; or ten pounds as to Manchester or Birmingham; or eight pounds if situate elsewhere, and be allowed a commission of twenty-five per cent. Power to compound rate.

By sec. 4 the vestry of any parish may from time to time order that the owners of all rateable hereditaments to which sec. 3 (*supra*) extends, situate within such parish, shall be rated to the poor-rate in respect thereof instead of the occupier on all rates after the date of such order; and thereupon and so long as such order shall be in force, the following enactments shall have effect:—

1. The overseers shall rate the owners instead of the occupiers, and allow them a deduction of 15 per centum from the rate. Allowance to owners on rate.

(a) Although the owner is to pay the rates, the goods of the occupier may be seized: sec. 20 (Act 1819).

2. If the owner of one or more such rateable hereditaments shall give notice to the overseers in writing that he is willing to be rated for any term not being less than one year in respect thereof, whether the same be occupied or not, the overseers shall rate such owner accordingly, and allow to him a *further* deduction not exceeding 15 per centum from the rate. See *Bennett v. Atkins*, 4 C. P. D. 80; 48 L. J. C. P. 95; 40 L. T. 66.

3. The vestry may rescind the resolution.

This section is only applicable to a rateable hereditament in which a dwelling-house is included.

Where owner rated *ultra vires*.

In some parishes the vestries have taken advantage of this 4th sec. to reduce the rating of houses below the actual rent paid, so as to make the rateable value appear on the list below the statutable annual rateable value, but on which the vestry make the order that the owner be rated instead of the occupier.

Remedy by appeal.

In such case the remedy of the owner is by appeal to the sessions against the rate when made; but, the valuation list being untrue in the statement of the annual value the owner should make his objection, in the first instance, to the Assessment Committee.

The Representation of People Act, 1867.

By sec. 7 (*a*), 30 & 31 Vict. c. 102, "The Representation of People Act, 1867," it is provided that, in boroughs where the dwelling-house or tenement is let wholly in apartments or lodgings not separately rated, the owner shall be rated to the poor-rate; so where a house was let out in separate rooms to tenants using the street door, &c., in common, the owner occupying no part of the building, he was held to be rateable instead of the occupiers: *Stamper v. Sunderland-on-Sea*, 37 L. J. M. C. 137; L. R. 3 C. P. 388. Where "sets of rooms" or "flats" are occupied in the Victoria Mansions, Westminster, are held to be properly, if separately, rated; *R. v. St. George's Union (Committee)*, 41 L. J. M. C. 30; 3 C. P. 388. L. R. 7 Q. B. 90; 25 L. T. 696; 20 W. R. 179.

Stamper v. Sunderland-on-Sea, 37 L. J. M. C. 137, L. R. 3 C. P. 388.

By the same Act, sec. 7, where a dwelling-house or tenement shall be wholly let out in apartments or lodgings not separately rented, the owner shall be rated in respect thereof to the poor-rate (*b*).

Full value

By sub-sec. 2 to sec. 7, the full rateable value of every

(*a*) See Circular of the Poor Law Board, 15 Nov., 1867.

(*b*) This section is not to affect

compositions existing at the passing the Act.

dwelling-house or other separate tenement, and the full rate of house, in the pound payable by the occupier, and the name of the occupier, shall be entered in the rate-book. &c., to be entered in rate-book.

If the correct amount of the assessment include the *fraction of a farthing*, and it be made up to even money, this may be a subject of appeal, but no action on a distress will lie: *Barin v. Hutchinson*, 31 L. J. M. C. 229. Accuracy in amount charged for rate.

Every person rated as the owner of any house, apartment, or dwelling-house, thinking himself aggrieved by any rate, will have the like remedy by appeal against the same as any other person thereby rated. He will also have the right of voting in vestry. Sec. 22 Sturges Bourne's Act, 59 Geo. 3, c. 12. Appeal against a rate to sessions by owner, 59 Geo. 3, c. 12.

And under 32 & 33 Vict. c. 41, s. 13, every owner of every hereditament for the rates of which he has become liable has the like right of appeal against the valuation lists and poor-rates as if he were the occupier thereof. See *Cross v. Alsop*, L. R. 6 C. P. 315; 40 L. J. C. P. 5. Appeal against valuation lists and rates, 32 & 33 Vict. c. 41.

By the Poor-Rate and Assessment Act, 1882, 45 & 46 Vict. c. 27, s. 4, the authority to make orders on the owners of small tenements under the above Acts is extended to the highway-rates; and sec. 30 of the Highway Act, 1835, is repealed. Application to highway-rates, Act 1882.

The Assessment Acts and Appeal.

It was considered expedient, in 1862, that more effectual provision should be made for securing the uniform and correct valuation of parishes in the Unions of England, and, to effect that object, there was then passed "The Union Assessment Committee Act, 1862," 25 & 26 Vict. c. 103; see also the Amending Act of 1864, 27 & 28 Vict. c. 39, and Act of 1880, 43 & 44 Vict. c. 7. The Union Assessment Committee Acts, 1862, 1864, 1880.

In 1869, "The Valuation (Metropolis) Act," 32 & 33 Vict. c. 67, was passed, "to provide a common basis of value for the purposes of government and local taxation, and to promote uniformity of assessment of rateable property in the metropolis."

The Assessment Act, 1862, is, in the Metropolis Act, 1869, styled "The Principal Act," but the clauses which have, in particular, reference to the preparations of the valuation list, and the appeals against the list are, as to the metropolis, repealed, and new provisions are made in that Act, which is fully treated on with the Amending Act of 1875, *infra*, *tit.* "The Valuation Metropolis Act, 1869." Act 1862, the Principal Act.

**Nomina-
tion of the
assessment
committee.** Both in and out of the metropolis an "Assessment Com-
mittee of the Union," for the investigation and supervision
of the valuations to be made within such union, is elected
annually, at the first meeting after the election of the
guardians, from among themselves. Such committee to con-
sist of not less than six or more than twelve members, one-
third of whom are to be *ex officio* guardians, if so many
qualified : Act 1862, s. 2.

**In a
borough.** Where a union has the same bounds as a borough, the
names of the assessment committee are to be transmitted to
the town council, who may appoint from their own body the
same number of members to the committee as the guardians
had nominated : Act 1862, s. 3.

**Its autho-
rity.** The authority of the committee appointed for the union
extends over every parish in the union : Act 1862, s. 7.

**The valua-
tion list.** The overseers of each parish, within three months after
the appointment of the committee, will make a list of all the
rateable hereditaments in the parish, with the annual value
thereof, and have power to revise such valuation ; and such
list, when signed by them, will be styled "*The Valuation
List*:" Act 1862, s. 14 (*a*). Churchwardens are included
in "overseers:" *Morgan v. Parry*, 17 C. B. N. S. 334.

**Gross
rental.** For the definition of the gross estimated rental see *tit.*
"Poor-Rate," *supra*, p. 384, Act 1862, s. 15 ; and *tit.* "The
Valuation (Metropolis) Act, 1869," s. 4, *post*, p. 444.

**All rate-
able pro-
perty to be
inserted in
the list.** All rateable property is to be inserted in the valuation
list, with the true rateable value independently of the pro-
visions of the Small Tenements Act. See *Sunderland-on-
the-Sea v. Sunderland Union*, 34 L. J. M. C. 121 ; 18 C. B.
N. S. 531 ; 13 L. T. 239 ; *R. v. The Foundling Hospital*,
L. R. 7 Q. B. 83 ; 41 L. J. M. C. 41 ; 25 L. T. 562.

**Deposit
and notice
of list (*b*).** The valuation list, made and signed by the overseers, is
to be deposited by them in the place where the parish books
are kept, and a copy delivered to the board of guardians (*c*).
The overseers are also required to give public notice of the
deposit of the list on the Sunday next following such deposit,
in the same manner as in the case of the publication of a
poor-rate after the justices' allowance ; that is, on or near
the church doors of all the churches and chapels within the
parish to which the list is applicable, previously to the com-
mencement of divine service. See 17 Geo. 2, c. 3, s. 1 ;

(*a*) This section does not apply to the metropolis.

(*c*) The guardians as a body, and not the committee.

(*b*) This section does not apply

1 Vict. c. 45, s. 2; *Ormerod v. Chadwick*, 16 M. & W. 367. Fourteen days after such notice the lists are to be transmitted to the assessment committee: Act 1862, s. 17.

Within fourteen days after the transmission of the list (or of any supplemental list) to the committee notice thereof is to be given to every railway, canal, telegraph, gas and water company named in such list as the occupier of property included in it, and not having a place of business in the parish to which the list relates, and of the sums set down as the rateable value of such company's property in the list. See 27 & 28 Vict. c. 39, s. 5 (The Amending Act, 1864.)

All persons assessed or liable to be assessed to the relief of the poor of the parish, and any overseer and ratepayer, may inspect and demand copies and extracts from the list so deposited or transmitted as above mentioned: Act 1862, sec. 17. And so may land-tax commissioners, surveyors, and assessors inspect the valuation lists: 43 & 44 Vict. c. 19, s. 39.

Any overseer or overseers in the union who, thinking his parish aggrieved by the valuation list of any parish in the union, or any person who may feel aggrieved by any valuation list on the ground of unfairness or incorrectness in any valuation included therein, or on the ground of the omission of any rateable hereditaments from such list, may, at any time after the deposit (sec. 17) of such list, and before the expiration of twenty-eight days after the notice of the deposit as aforesaid, give to the committee and to the overseers (a) a notice in writing of his objection, specifying the grounds thereof; and where the ground of any objection shall be unfairness or incorrectness in the valuation of any hereditaments in respect of which any person, other than the person objecting, is liable to be rated, or the omission of such hereditaments, also give notice in writing of such objection, and of the ground thereof, to such other person (b): Act 1862, s. 18.

The committee will hold meetings as may be required to hear objections to the lists, giving at least (c) twenty-eight days' notice of the holding thereof to the overseers of the

Notice to public companies on deposit of the list, or a supplemental list.

Inspection of lists.

Objections to list by overseers or other person.

Committee to meet and hear objections.

(a) This notice will be given to the overseers of the parish the assessment of which is objected to. As to the service of the notice, see sec. 42.

(b) See 17 Geo. 2, c. 38, s. 4;

41 Geo. 3, c. 23, s. 6; 6 & 7 Will. 4, c. 96, statutes applicable to poor-rate appeals and which are analogous.

(c) See *R. v. Salop*, 8 A. & E. 173, meaning, clear days.

parishes to which the list relates ; and such overseers are to publish the same on the Sunday next after they may receive the notice in the same manner as they would publish a rate allowed by justices (*a*). The committee will meet accordingly and hear and determine any objections to the lists brought before them (with power of adjournment), and may direct notice of any such objections (*b*) to be given by the overseers, or by the persons objecting to third parties before the further hearing thereof ; and the committee will have no power to hear any objections to the lists unless the required notices have been given. But the absence of such notices and objections thereto may be waived, and then the committee may act as though the notices had been duly given : Act 1862, s. 19 ; see *post*, s. 1, Act 1864, p. 439, under which the committee are *bound* to hear all objections.

Valuation
list may be
corrected
by com-
mittee.

The committee, having heard the objections before them, may make such alterations in the valuation of hereditaments in the lists, and insert therein any rateable hereditament omitted therefrom, and make such corrections in the names, descriptions and particulars in the list, upon such information as may to them seem sufficient ; and, with the consent of the guardians, may employ a person to survey and value (*c*) the hereditaments comprised in the list, or any of them, or omitted therefrom, and may take such other means as may be considered necessary for ascertaining the correctness thereof (*d*). And having heard all objections, and made such alterations, insertions and corrections as may seem proper, the committee are to approve the list under the hands of those members thereof present at the meeting at which the same is approved, with the date of such approval : Act 1862, s. 20 (*e*).

New
houses.

Newly-erected houses, although not occupied, are rateable hereditaments, and should be inserted in the valuation list : Act 1862, ss. 14, 20, 25 ; *Maldon v. Kingston*, 38 L. J. M. C.

(*a*) As to the signature of the notice, see *Burnley v. Netherley*, 28 L. J. M. C. 152.

(*b*) See *R. v. Eyre* and other cases, tit. "Appeal."

(*c*) See 27 & 28 Vict. c. 39, s. 4 ; *R. v. Cobbe*, 13 L. T. 802 ; all particulars must be shown by the valuer : see *Rawlence v. Hursley*, 47 L. J. M. C. 31.

(*d*) The valuer, under the Amending Act, 1864. 27 & 28

Vict. c. 39, s. 4, must show all the particulars of the hereditaments comprised in his valuations, and the amounts at which the same are valued, and the list be deposited for inspection : see *R. v. Crabbe*, 13 L. T. 802 ; as to the sufficiency of the form, see *Rawlence v. Hursley*, 47 L. J. M. C. 31.

(*e*) This section does not apply to the metropolis.

125; S. C., *R. v. Maldon*, L. R. 4 Q. B. 326; 10 B. & S. 323; *ante*, p. 424.

The term "hereditament" in its ordinary sense includes lands, tenements, and whatever immovable things a person may leave to himself and his heirs by way of inheritance; and which if not otherwise bequeathed would go to the heir, and not to the executor as a chattel. The Metropolis Valuation Act, 1869, defines it to mean, "any lands, tenements and hereditaments which are liable to any rate or tax in respect to which the valuation list is by the Act made conclusive": Act 1869, s. 4. Hereditament.

When the committee make any alteration in the valuation of any hereditaments included in, or insert any rateable hereditament omitted from a valuation list, the list is to be deposited as directed in sec. 17 (*ante*). Notice is to be given of not less than seven days nor more than fourteen from the re-deposit for the hearing of any objections to the list so altered; and when the committee have heard and determined any such objections, or have made such further alterations, insertions, and corrections therein, they will approve the same as under sec. 20: Act 1862, s. 21. Deposit of the valuation lists when altered, and notice for objections.

The requirement as to the notices, &c., under sec. 21 are to be performed by the overseers, see *The Chorlton Assessment Committee v. The Chorlton Overseers*, 12 L. T. 581; *R. v. Chorlton-on-Medlock* (S. C.), 35 L. J. M. C. 56.

From the words of this (21st) section, that the committee may deal with "further" alterations, &c., in the list, it would seem they may make any new alterations, &c., and hear any new objections to the general list. As to notices to be given where alterations are to be made, see sec. 19 (*ante*). Further objections.

Where any alterations are made in the list under sec. 21, the list should be re-deposited; see *R. v. Chorlton*, 42 L. J. M. C. 34. The re-deposit of the list is not required where an alteration has been made by the committee on an appeal to them after the approval of the list: *R. v. Edmunds*, L. R. 9 Q. B. 598; 43 L. J. M. C. 156; 31 L. T. 237. Re-deposit.

The valuation list when approved by the committee will be in the custody of the overseers, to be produced before the justices on the allowance of rates, and at the special and quarter sessions on any appeal, and at such times as the committee may direct: Act 1862, sec. 23. And every such valuation list approved by the committee and delivered to the overseers of the parish to which it relates, together with every supplemental list approved and deposited in like manner, The valuation list in force, and its custody.

will be the valuation list of the parish until a new list is made in substitution (*a*): Act 1862, s. 24 (*b*).

The supplemental list.

When and so often as any property not included in a valuation list in the parish becomes rateable, or there is an alteration in the occupation of property rated, or where property rated has become increased or decreased in value, supplemental valuation lists are to be made showing the annual rateable value of such property according to the judgment of the overseers: Act 1862, ss. 25, 26.

As to the insertion in the list of new houses which were incomplete at the time of the making the list (*c*), see 31 & 32 Vict. c. 122, sec. 38; *Maldon v. Kingston*, S. C. R. v. *Maldon* (*supra*); *R. v. Hammersmith*, 33 L. T. 183. As to empty houses, see *Staley v. Castleton*, 33 L. J. M. C. 178; 5 B. & S. 505; *Staunton v. Powell*, Ir. R. 1 C. L. 182. See also, *infra*, p. 424.

Objections to the supplemental list

All provisions in relation to the signature (ss. 14—16); deposit (sec. 17); objections (ss. 18, 19); approval (ss. 20, 21); or otherwise (ss. 23, 24, 28, 32, and 39), concerning the valuation list will be applicable to every new or supplemental list: Act 1862, sec. 27 (*d*).

Appeal to quarter sessions against the valuation list (but not applicable to the Metropolis).

If the overseer or overseers of any parish in any union, having failed to obtain relief from the assessment committee (Act 1864, sec. 1, *post*, p. 439), and having reason to think that such parish is aggrieved by the valuation list (which would include also any supplemental list) of any parish within such union, whether it be on the ground that the rateable hereditaments comprised therein are valued at sums beyond the rateable value thereof, or on the ground that the rateable hereditaments comprised in the valuation list of some other parish in such union are valued at sums less than the annual rateable value thereof (*e*), it will be lawful for such overseer

(*a*) A parish under a local Act is excepted.

(*b*) This section will not apply to the metropolis.

(*c*) As to the saving exceptions and special rules of rating under Local Acts, see sec. 36 Act 1862. As to including unions under Gilbert's Act, see sec. 45. *ib.*; and as to Local Acts, see *R. v. Kent JJ.*, 9 B. & C. 283; *R. v. St. James'*, *Westminster*, 1 A. & E. 241; *R. v. Norwich*, 3 D. & R. 32.

(*d*) A copy of the lists in force

is to be deposited in the Board room, and kept in the custody of the Clerk to the Guardians for inspection: Act 1862, sec. 31. Sections 27 & 31 do not apply to the metropolis.

(*e*) This appeal seems to have been framed on the appeal clause in 15 & 16 Vict. c. 81, s. 22. But here the appeal is limited to two grounds only. The 15 & 16 Vict. c. 81, provides other grounds of appeal against the assessment of the county rate; *ante*, p. 210.

or overseers, with the consent of the vestry [see P. H. A. 1875, s. 144, a. p. 313], summoned for the purpose of considering the expediency of giving such consent, to appeal to the quarter sessions for the county or borough in which the greatest number of parishes belonging to the union is situate, or in case the number in any two or more jurisdictions is equal, to the quarter sessions having jurisdiction over the parish in which the workhouse of the union is situate at the sessions to be holden after the expiration of a month after the allowance (a) of a deposit (a) of such valuation list, against such valuation list of the parish which shall appear to be over or under-valued, and if in any case any such overseer or overseers appeal against the valuation list of any other parish on the ground that the rateable hereditaments in such list are valued at less than the annual rateable value thereof, they shall give fourteen clear days' notice in writing, previous to the first day of the quarter sessions at which the appeal is to be made, of the intention to appeal, and the grounds thereof to the overseers of the poor of such parish, and to the guardians of the union comprising such parish [see Union Asst. Act, 1864, s. 1, p. 439]; and if such appeal be on the ground that the rateable hereditaments in such list are valued beyond the annual rateable value thereof, such overseer or overseers shall give fourteen days' notice in writing previous to the quarter sessions at which the appeal is to be made to the guardians of the union in which such parish is situate (b). The court, on hearing the appeal, may either confirm the valuation list or correct "such irregularities" (*sic orig.*) or inaccuracies as may be proved to exist therein, and as may to them seem fair and just. But no such list shall upon such appeal be questioned or destroyed in regard to any other parish, unless the court deem it necessary to proceed to the making an entirely new valuation list: Act 1862, s. 32.

(a) The rate is "allowed" by the justices; but the valuation list is "approved" by the committee: see secs. 20 & 21. "Allowance" is here evidently inserted instead of "approved." As to the time for the "deposit" of the list, see sec. 17. From the language of sec. 21 the committee may make alterations in the deposited list and amend it, when it will be re-deposited as under sec. 17. "Allowance" would, no

doubt, be read as meaning the "approval" of the committee to the list.

(b) Under the first class of appeal the rating of an individual parish may be objected to; under the second, the rating of the parish in itself, and irrespective of any other parish, may be objected to as being, in general, assessed too highly, and hence the distinction in the notices.

The hearing the appeal on the valuation list.

Rate only to be made in accordance with valuation list.

Act 1862, s. 28.

Provision where alteration in occupation of property.

Importance of sec. 28, Act 1862.

By sec. 33 (*a*) the sessions may adjourn the appeal and order a new survey or valuation of any of the parishes in respect of the appeal to be made, and may appoint a proper person for that purpose, and the result of the survey and valuation are to be returned to some subsequent sessions.

In every parish where the valuation list has been approved and delivered to the overseers (see sec. 24) no rate (*b*) for the relief of the poor, or other rate which by law is required to be based upon the poor-rate, shall be of force, unless the hereditaments included in such rate (except where the rate is made under a local Act, see sec. 29), be rated according to the annual rateable value thereof appearing in the valuation list in force in such parish, and the overseers shall, before the rate be allowed by the justices, sign a declaration according to the form set forth in the schedule (*c*) (that they have examined and compared the several particulars in the respective columns in the rate with the valuation list in force in the parish, and that the hereditaments are rated in accordance with the value appearing in such list). And it is provided that where by reason of any alteration in the occupation of any property included in the valuation list such property has become liable to be rated in parts not mentioned in such list as rateable hereditaments and separately rated therein, such parts may, where a supplemental valuation list showing the annual rateable value of such parts has not been approved and delivered as required (see sec. 26), and whether such list has or has not been made be rated according to such amounts as shall be fair apportioned parts of the annual value appearing in such valuation list (*d*) in force of the hereditaments out of which such parts have been constituted: Act 1862, sec. 28.

Section 28th shows at once the importance to be attached to the valuation list and its preparation, on the authority of which the rate will be wholly based. It will be noticed that the overseer (*e*) is to make a declaration that he has compared the rate with the valuation list, and that the rate has been

(*a*) Repealed as to the metropolis.

(*b*) For form of rate, see Glen's Poor Law Orders, 604.

(*c*) The first part of the section is repealed as to the metropolis: 32 & 33 Vict. c. 67, s. 77, and sch. 5.

(*d*) This gives the overseers

power, where the occupation has become divided, to rate the several occupiers in divisible proportions, but without any alteration of the total rateable value.

(*e*) Under 43 Eliz. c. 2. it is necessary the actual majority of the overseers and churchwardens should sign the rate. But under

made according to the values appearing in the valuation list, but no provision is made for the correction of any inaccuracies or omissions as made for the metropolis in the 71st and 72nd secs. of the Valuation (Metropolis) Act, 1869. Sec. 43 of the Act, 1862, seems still further to point to the conclusive authority of the valuation list as "delivered," enacting that, "after the valuation list has been approved and delivered, every such rate (*a*) (that is, every rate made after the Act came into force) shall show the annual rateable value of each hereditament comprised therein according to the valuation list in force in the parish." It would appear that the Legislature of 1862 did not intend that the overseers should have power to make any alteration whatever in the valuation list, as such a provision, inserted in the original Bill, was not retained in the Act. It would have been preferable had there been some ready mode to amend individual inaccuracies, as was subsequently enacted as regards the rating in the metropolis, see (*infra*), The Valuation Metropolis Act, 1869, sec. 71.

The sections 28 and 43, and so also sec. 30, however, apply only to the statement as to the rateable value; a change in the occupier's name will not affect the validity of the rate; it would only, in such case, be necessary to identify the property with that in the valuation list (*a*).

The 43 Eliz. c. 2, which, as before stated, authorised the levying of a poor rate, provided by sec. 6 that, if any persons should find themselves aggrieved with any cess or tax, or other act done by the churchwardens or other persons, or by the justices allowing the rate, to *appeal generally* to the general quarter session, and the justices there were empowered to make such order thereon as to them should be thought convenient; and their decision would include and bind all parties.

17 Geo. 2, c. 38, s. 4, extended the statute of Elizabeth, giving the right of appeal to any person who might find himself aggrieved by any rate or assessment made for the relief of the poor; or should have any material objection to

In what cases an appeal against a poor rate under 43 Eliz. c. 2.

And as extended by 17 Geo. 2, c. 38.

Baker v. Lock, 34 L. J. M. C. 49; 18 C. B. 52, it would seem an assistant overseer appointed under 59 Geo. 3, c. 12, might sign as one of the overseers. Since 25 & 26 Viet. c. 103, seeing that they have to make a declaration that they have compared the

rate with the valuation list (see the schedule) the churchwardens and overseers should now themselves sign the rate.

(*a*) Except when the rate is made under any local Act: sec. 29, Act 1862.

any person or persons being on or left out of such rate or assessment; or to the sum charged on any person or persons therein. This section provides for a "reasonable notice" being given, and for the hearing the appeal.

When object of rate legal, *ex facie*.

An appeal cannot be made for merely trying if the rate has been made *bond fide* for the purposes for which it is professed to be made: *R. v. Middlesex*, 8 Dowl. 103. If the object of the rate be legal on the face of it, it cannot be quashed; it must be disputed on the overseer's accounts: *R. v. Gloucester (Mayor)*, 5 T. R. 346. The statute does not make this a ground of appeal.

Where rate a nullity.

Where a rate is a nullity, or the person charged is not rateable, it is safer for him to appeal to the sessions for relief than rely on his action of trespass or replevin. It may be that something is payable for the rate, and then the only action would be for excessive distress: see *Milward v. Caffin*, 2 Bla. Rep. 1336; *Durant v. Boys*, 6 T. R. 580; 1 A. & E. 264.

Special sessions.

Under the Parochial Assessment Act, 1836, 6 & 7 Will. 4, c. 96, s. 6, the justices are directed to hold special sessions four times in the year for hearing appeals against the rates of the several parishes within their respective divisions (*a*), of the holding which public notice is to be duly given (*b*); and at such sessions (or adjournments thereof) the justices will hear and determine objections to such rates on the ground of inequality, unfairness, or incorrectness in the valuation of any hereditaments included therein. And their decision will be binding, unless the person impugning it within *fourteen* days gives notice in writing of his intention of appealing against it, and of the matter or cause of such appeal, to the person or persons in whose favour such decision shall have been made; and enters into his recognizance, with securities, within *five* days to try the appeal at the next general quarter sessions which shall first happen, and to abide the judgment of the Court.

The decision of special sessions binding unless appealed against to quarter sessions.

By the same section, it is provided that before the special sessions no such objection shall be inquired into unless notice of the objection in writing, under the hand of the complainant (*c*), be given *seven* days at the least before the day appointed for such special sessions, to the collector, overseers, or other persons by whom such rate was made; and under

(*a*) Borough justices may hold these special sessions, although not in a "division": see 12 & 13 Vict. c. 18, s. 1.

(*b*) As to the costs for conven-

ing the special sessions, see 13 & 14 Vict. c. 101, s. 7.

(*c*) As to the signature of the notice, see tit. "Appeal," *ante*, p. 132.

the Union Assessment Act, 1864, sec. 1, the appellant must also give twenty-one days' notice of his intention to appeal, and the grounds thereof, to the assessment committee of the Union; and he is not empowered to appeal to any sessions unless he shall have previously given notice to such committee of his objection to the valuation list, and have failed to obtain such relief in the matter as he deems just.

The jurisdiction of the special sessions is limited to inquiring into the true value of the hereditaments rated, and the fairness of the amount at which they are rated. They have no power to inquire into the liability of any hereditaments to be rated: 6 & 7 Will. 4, c. 96, s. 6 (*a*). And by sec. 7, the justices in special sessions will have all the powers as vested in quarter sessions for amending or quashing the rate, and of giving costs, which sec. 6 empowers them to award costs.

By sec. 1 of the Union Assessment Committee Act, 1864, 27 & 28 Vict. c. 39, it is enacted, in addition to the notices required under sec. 6 of the Parochial Assessment Act, 6 & 7 Vict. c. 96, before any appeal shall be heard by any *special* or *quarter* sessions against a poor rate made for any parish contained in any union to which the Union Assessment Committee Act, 1862, applies, the appellant shall give twenty-one days' notice in writing previous to the special or quarter sessions to which such appeal is to be made of the intention to appeal, and the grounds thereof, to the *Assessment Committee* of such Union; provided that no person shall be empowered to appeal to *any* sessions (special or quarter) against a poor rate made in conformity with the valuation list approved of by such committee, unless he shall have given to such committee notice of objection against the said list, *and shall have failed to obtain such relief* in the manner as he deems just; and which objection, after notice given at any time in the manner prescribed by the said Act with respect to objections, the committee shall hear, with full power to call for and amend such list, although the same has been approved of, and no subsequent list has been transmitted to them; and if they amend the same, shall give notice of such amendment to the overseers, who shall thereupon alter their then current rate accordingly. The valuation lists on amendment after appeal need not be re-deposited under sec. 17, "Act 1862," *R. v. Edmonds*, L. R. 9 Q. B. 598; 43 L. J. M. C. 156; 31 L. T. 237; 22 W. R. 944.

Jurisdiction of special sessions.

Conditions of appeal under Act 1864, s. 1.

The appellant must have "failed to obtain relief." Committee bound to hear obligations.

(a) Sections 6 & 7 are repealed as to the metropolis.

- Assessment committee co-respondents.** By sec. 2, Act 1864, the assessment committee may be co-respondents with the consent of the guardians of the union, but in the name of the guardians, in like manner, and with the same incidents, and subject to the same liabilities, and entitled to the same remedies and rights, as in the case of persons, other than the overseers to whom notice of appeal may be given.
- Costs out of common fund.** And by sec. 3, the costs of the committee are to be charged to the common fund of the union, *unless* the Court before whom such appeal is heard shall direct the costs, or any part thereof shall be charged to the parish, the rate of which is appealed against.
- Service of notices on committee.** Under sec. 42, Act 1864, notices may be served on the committee by leaving them at the office of the clerk to the board of guardians, or sending them by post, addressed to the committee at such office, or by delivery to their clerk, or at his place of abode (a).
- Failing to obtain relief.** On the requirement that the appellant, before he acquires a right of appeal, should have "failed to obtain relief" on his complaint made to the assessment committee against the valuation list, several cases have been decided: two of those authorities, in particular, are in apparent conflict, and require serious attention in making an appeal. The cases alluded to are *R. v. The Great Western Ry.*, L. R. 4 Q. B. 323; 38 L. J. M. C. 89; 10 B. & S. 318; 20 L. T. 481; 17 W. R. 670; and *R. v. Wiltshire*, 48 L. J. M. C. 148; 4 Q. B. D. 326.
- In *R. v. The Great Western Ry.*, after the appellants had failed to obtain relief from the committee, they appealed against a rate to the quarter sessions. On the hearing at the sessions a special case was granted, and whilst it was pending another rate was made. Without going again to the committee, the parties appealed direct to the sessions, and sought to enter and respite their second appeal, adjourning the hearing on the ground that the case granted on the first appeal was not disposed of, and that the same question was then involved. The sessions refused to enter the appeal, and the Court of Queen's Bench held they were right; Cockburn, C. J., saying, "Every appeal against a rate is a fresh proceeding; and whatever conditions the statute annexes to these proceedings must be followed." "The assessment committee," said

(a) Service at the place of abode is an addition to the service of the notice of the order of removal in a pauper case.

Lush, J., "are made the first appellant body : the appellants must go through them to the quarter sessions."

In *R. v. Wiltshire (supra)*, the appellant had failed to obtain relief of the committee before a poor-rate was actually made in conformity with the list ; it was, in this case, held that the party *need not* make fresh application for relief to the committee after the rate was made. Here there had been no appeal. And although the Lord Chief Justice said, "his confidence was somewhat shaken in the correctness of the decision in *R. v. The Great Western Ry.*, it was, he said, distinguishable, on the ground, no doubt, pointed out by Mr. Arthur Charles, that the second rate was made while an appeal was pending against the first rate, and there had been *no* appeal in this case." "Without overruling *R. v. The Great Western Railway Co.*," said the Lord Chief Justice, "we may give effect to the intention of the Legislature by saying that, when a second rate is not in question, a party who has been once before the assessment committee, and failed to obtain relief, is in a position to appeal to the next practicable sessions. Here the appellants ought to have appealed to the July sessions." "It seems," remarked the Lord Chief Justice, in reply to Mr. Webster's argument, "that the Legislature could never have intended anything so absurd, as that though a party may have gone before the committee in the first instance, and sought relief once, he was bound to go again through the same process as soon as the rate was made before he had a right to appeal. I should struggle to the uttermost before arriving at a conclusion so unjust." (See the report in the Law Journal.) *R. v. Wiltshire* followed the decision by Hannen, J., in *R. v. Derbyshire*, 25 L. T. 43 ; 19 W. R. 934, in which the rate appealed on was made pending the hearing the complaint, before the committee, against the list.

The result is, that where the rights of the appellant, before the assessment committee, have been exhausted by his making his appeal to the sessions, whether special or quarter sessions, and another rate is made, although on the same valuation list, a fresh application must be made to the assessment committee. New objections might arise ; the committee might be differently constituted ; or the committee on reconsideration might form another view of the questions before them. Where, however, there has been no such appeal, then the appellant may make his appeal to the next practicable sessions, after the making a rate, on the assessment complained of, giving the notices as

Appellant's rights before the assessment committee must be exhausted before appeal.

required by sec. 6 of 6 & 7 Vict. c. 96, Act 1862; and sec. 1 of 27 & 28 Vict. c. 39, Act 1864.

There must be a decision on merits by the committee.

When an application has been made to an assessment committee, under sec. 1 (*supra*), they come to a final decision before the right of appeal arises. Should they adjourn their decision pending the hearing a special case on the like point before them, the appellant will not have "failed to obtain" his relief within the meaning of the section; and the quarter sessions will have no jurisdiction to hear an appeal: *Reg. or Williams v. Bedminster*, 1 Q. B. D. 503; 45 L. J. M. C. 117; 34 L. T. 795.

Making an alteration in the rate.

On the committee making an alteration in the rate which the applicant may think insufficient, his right of appeal attaches: *R. v. Derbyshire* (Hannen, J., B. C.), 25 L. T. 43; 19 W. R. 934.

Appellant confined to grounds of appeal before the committee.

The appellant in his appeal to the special sessions, or the assessment committee, will have stated his grounds of appeal; he will be restricted to the same grounds on his appeal to the quarter sessions, and he will have his appeal on those grounds on which he may have failed to obtain relief: *R. v. Bedminster*, 30 L. T. 710; 22 W. R. 943, Q. B.

But not restricted to the evidence.

A case is reported in the *Law Times* of 7th January, 1880, as having been heard before Mr. E. Kay, Q.C. (now Mr. Justice Kay), and a bench of justices, in which it was sought to restrict the appellant to the evidence produced before the committee, but which objection was overruled. In that case the appellant had gone before the committee as a mere matter of form to get his right of appeal, and had offered no evidence; he submitted certain amounts to the committee without any explanation and "without prejudice," which were rejected. The sessions held the right of appeal fully arose.

When parties need not go before the committee.

Where the objection to the rate is one which does not affect the valuation list, and is not one on which the committee is empowered to give relief, as where the appeal is on the ground of a statutory exemption, such appeal may be prosecuted without going previously before the assessment committee: *Walsall v. London and North Western Ry. Co.*, 46 L. J. M. C. 102.

The next practicable sessions.

The 17 Geo. 2, c. 28, s. 4, requires an appeal against a rate to be made to the next practicable sessions after the publication of the rate. This enactment must now be governed by sec. 1 (*supra*), requiring the appellant to have "failed to obtain relief" from the assessment committee. (On the point, which is the next practicable sessions, see *infra*, tit. "Appeal.")

Where several ratepayers join in an appeal to the committee or sessions a part of them may abandon their appeal, but the remainder will have their right to proceed : see *R. v. Kent*, 6 L. R. Q. B. 132 ; 40 L. J. M. C. 76 ; 19 W. R. 205 ; and the point discussed, *infra*, tit. "Appeal."

After the termination of an appeal against a poor rate notice is to be given, under sec. 1 (Act 1864), 27 & 28 Vict. c. 39, to the overseers of any amendment of the rate, and the valuation list will be amended as directed by sec. 22, Act 1862, but the list amended on appeal will not require to be re-deposited under sec. 21 (*ib.*). A rate therefore made on such list would be good : *R. v. Edmonds*, L. R. 9 Q. B. 598 ; 43 L. J. M. C. 156 ; 31 L. T. 237 ; 22 W. R. 944 ; and by sec. 34 the costs of such survey and valuation are to be costs in the appeal at the discretion of the court.

By sec. 35, Act 1862, the Act is not to affect the composition for rates by owners of property, and their being assessed in such manner as they were enabled by any statute *before* the passing of the Union Assessment Act. See the Representation of the People's Act, 1868, and the Poor Rate Assess. and Collec. Act, 1869, 32 & 33 Vict. c. 41, as to the assessment and collection of rates in respect of houses of low rentals.

As to the including of all rateable property in the assessment, see *Sunderland Overseers v. Sunderland Union*, 18 C. B. N. S. 532 ; 34 L. J. M. C. 121 ; 13 L. T. 239.

The clerk to the assessment committee must be the clerk to the guardians : Act 1862, s. 10 ; and the notices will be addressed to him either as "clerk to the guardians" or "assessment committee," according to the character of the appeal.

The costs of the survey and valuation and of the appeal will be at the discretion of the court to be paid as may be thought fit. Where the appeal is on the ground that the rateable hereditaments are valued beyond their rateable value, if the court determine in favour of the appellants, the court shall ascertain the costs, and order the board of guardians of the union in which such parish is situate to pay the same to the appellants out of the common fund of the union : Act 1862, s. 35.

The Valuation (Metropolis) Act, 1869.

Titles of Acts.	The Valuation (Metropolis) (a) Act, 1869, applies to unions situate within the Metropolitan Board of Works jurisdiction: sec. 3. And the Union Assessment Committee Act, 1862, is termed "the Principal Act," and that, and the amending Act of 1864, are incorporated with it, with the exception of such clauses as are repealed, in reference to the metropolis, by the schedule to the Act 1869 (b).
Ratepayer.	The persons who are to be assessed to the rate are those who are liable to any rate or tax in respect of property entered in any valuation list: sec. 4. An owner will be included: see 32 & 33 Vict. c. 41, s. 4, The Poor Rate Assessment and Collection Act, 1869.
Overseers.	The "overseers" will be any person or bodies of persons performing the duties of overseers in the making or collecting of poor rates: sec. 4. This will include the local boards of the various parishes in the metropolis where such boards perform the duties of the overseer: see also sec. 5, sub-s. (1).
Parish.	A "parish" is defined to be a place for which a separate rate can be made, or a separate overseer is appointed: sec. 4; see also 29 & 30 Vict. c. 113, s. 18.
Union.	A "union" will be a parish for which there is a separate assessment committee, under the Metropolis Valuation Act, and the Acts incorporated therewith: sec. 4.
Gross value.	In the Metropolitan Act the term used in the Principal Act, sec. 15, "gross estimated <i>rental</i> " is abandoned for "gross <i>value</i> ," and which means "the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for a hereditament, if the tenant undertook to pay all usual tenant's rates and taxes, and tithe commutation rent charge, if any, and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses, if any, necessary to maintain the hereditaments in a state to command that rent."

(a) See "The Metropolis Management Act, 1855," 18 & 19 Vict. c. 120.

(b) The parts of the Principal Act which are repealed as to the metropolis are:—"Sections 3, 14, 15,—the following words in sec. 17, "and a copy of such valuation list shall be forthwith delivered to the Board of Guardians,—secs.

22 to 27,—sec. 28, down to 'schedule hereunto annexed'—secs. 29, 31 to 36, 39, 41, 42, 43, and 45."

Secs. 1, 9, & 11 of the Amendment Act of 1864 are in like manner repealed; also secs. 30, 31, 32, and 38 of the Amendment Act, 1868.

The term "rateable value" means the gross value after deducting therefrom the probable annual average cost of repairs, insurance, and other expenses as above mentioned.

"Hereditament" includes all property liable to any rate or tax in respect to which the valuation list is, by the 45th sec. of the Act, made conclusive evidence of the gross value, and of the rateable value thereof: sec. 4.

The assessment committee will be appointed under sec. 5 of the Act. Where a parish is in a union formed under the Poor Law Amendment Act, 1834, the Principal Act of 1862, s. 2, will be in operation. But where the parish is not included in the Act of 1834, then the vestry elected under the Metropolitan Management Act, 1855, subject to the effect of Local Acts (of which there are several (*a*)), the guardians under such Act will appoint the committee, or, in other cases, the vestry of the parish.

The overseers will make out the valuation list: sec. 6. And the proceedings, secs. 17 (*b*) to 21 of the Principal Act, as to the deposit of the list, the objections to the valuation made before the assessment committee, the holding the committee meetings, the alteration and redeposit of the list, are to be observed, subject to any alterations made by the Act: sec. 7.

Under sec. 51, the valuation list is to be made out in the form given in schedule 2 to the Act. The form there sets out in several columns the particulars to be specified, thus:—1. The number; 2. Name of occupier; 3. Name of owner; 4. Description of property; 5. Number of class; 6. Name or situation of property; 7. Extent; 8. Gross value as estimated by overseers; 9. Gross value as estimated by surveyor of taxes; 10. Rate of reduction per cent.; 11. Rateable value; 12. Gross value as finally determined by the assessment committee; 13. Rateable value as finally determined by the assessment committee.

No hereditaments are to be included in the list (except tithes, or payments in lieu of tithes) which are charged according to Rule 2, in sec. 60 of the Income-Tax Act, 5 & 6 Viet. c. 35. This provision will include:—1st, Ecclesiastical dues; 2ndly, Manorial dues and services, or other casual profits, not being rents or other annual payments reserved or charged; 3rdly, fines received in consideration of any demise of land

(*a*) See note to Glen's Lumley's Union Assessment Acts, 10th ed., p. 97, where the several local Acts for each parish

are referred to.

(*b*) Except so far as sec. 17 is repealed. (*n. (b)*, p. 441.)

or tenements, not being part of a manor or royalty demisable by custom, provided such fines have been applied as productive capital, on which a profit has arisen, or will arise, otherwise chargeable under the Act.

Under sec. 52, the percentage or rate of deduction to be made from the gross value in calculating the rateable value is not to exceed the amounts in the 3rd schedule to the Act (a).

Notice of Where the overseers insert any hereditament, not pre-

(a) The third schedule enumerates the following as the maximum rate of deductions :—

	<i>Maximum rate of deduction. Per cent. or proportions.</i>	
Class 1.—Houses and buildings, or either of them without land other than gardens, where the gross value is under £20	25	or $\frac{1}{4}$ th.
„ 2.—Houses and buildings, without land other than gardens and pleasure grounds valued therewith for the purpose of inhabited house duty, where the gross value is £20 and under £40	20	or $\frac{1}{5}$ th.
„ 3.—The same, where the gross value is £40 or upwards	16 $\frac{2}{3}$ rds	or $\frac{1}{3}$ th.
„ 4.—Buildings without land which are not liable to inhabited house duty, and are of a gross value of £20 and under £40	20	or $\frac{1}{5}$ th.
„ 5.—The same, where the gross value is £40 and upwards	16 $\frac{2}{3}$ rds	or $\frac{1}{3}$ th.
„ 6.—Land with buildings not houses	10	or $\frac{1}{10}$ th.
„ 7.—Land without buildings	5	or $\frac{1}{20}$ th.
„ 8.—Mills and manufactories	33 $\frac{1}{3}$ rd	or $\frac{1}{3}$ rd.
„ 9.—Tithes, tithe commutation rent charge, and other payments in lieu of tithe	To be determined in each case according to the circumstances and the general principles of law.	
„ 10.—Railways, canals, docks, tolls, water works, and gas works		
„ 11.—Rateable hereditaments not included in any of the foregoing classes		

Class 8 will receive a wide and general construction, and will include such buildings as are used for a distillery or a brewery, a builder's workshop, or a newspaper printing-office. See Lumley's Union Assessment Acts, by W. C. Glen, 10th ed., 152.

Returns of value. All occupiers are bound to make the same returns to the overseers of the value of their holdings as they have to make under the Income Tax Act, sec. 55, Metropolitan Valuation Act ; see also secs. 56—58.

Privileges preserved. All rights of exemptions and reductions, and all privileges for being rated on any exceptional principle of valuation, are preserved from the operation of the Act : sec. 54.

viously assessed, in the list (see also sec. 47 as to new alteration buildings), or raise the gross or rateable value of some hereditament above the value in the valuation list (or where there is no valuation list, in the assessment to the poor-rate);

made in valuation list to be given to occupier.

Or where the assessment committee (otherwise than in determining an objection) alter the list in like manner;

The overseer must, immediately after the deposit or re-deposit of the list, serve on the occupier of such hereditament a notice of the amount of such gross or rateable value thereof as so inserted in the list: sec. 9. And such notice must state the times at which and the mode in which objections are to be made: sec. 10.

Objections may be made before the assessment committee by any person who feels himself aggrieved by reason of the unfairness or incorrectness of the valuation of any hereditament, or by the insertion or incorrectness of any matter in the valuation list, or by reason of any omission of any matter therefrom, or that the list has not been transmitted by the overseers to the assessment committee. And the notice must specify the correction which the objector desires to be made: sec. 11.

Objections.
The notice.

The committee are to revise the list in accordance with the Acts; and on the totals of the gross and rateable value being ascertained and inserted in the list, three of the members of the committee present at the meeting are to sign the declaration of approval and certificate, and a duplicate is to be sent to the clerk of the metropolitan asylum district (a), and another to the overseers of the parish to which it relates: sec. 14.

Revision of list.

The overseers, on receiving the duplicate valuation, are immediately to deposit it in the place where the parish rate-books are kept, and publish notice thereof, and of the time and mode of making appeals, and of the grounds on which an appeal under the Act may be made.

Notice by overseers and deposit of list.

In every petty sessional division of the metropolis, the justices acting in such division are to hold a special sessions for hearing appeals against the valuation lists of the several parishes within their division, sec. 18; and of the holding of which due notice is to be given, secs. 22—42, sub-s. (10).

The
Special sessions.

(a) It is in reference to this deposit of the list that a portion of sec. 17, Principal Act, is re-

pealed as to the metropolis; n. (b), p. 444.

- Who may appeal.** At such special sessions, any ratepayer or overseers of a parish, so far as respects the valuation list of such parish, and any surveyor of taxes (*a*), so far as respects the valuation list of any parish in the petty sessional division, may, if he or they feel aggrieved by any decision of the assessment committee on an objection made with respect to the unfairness or incorrectness of the valuation of any hereditament in the list, but not otherwise, appeal against such decision to the special sessions: sec. 19.
- Parties may still appeal to the assessment sessions.** But such right of appeal will not deprive a person of any right of appeal to the assessment sessions under the Act: sec. 19. See also sec. 32.
- The owner.** As to an appeal by an owner, see 32 & 33 Vict. c. 41, s. 13, the Poor Rate Assessment and Collection Act, 1869. See also sec. 70 of the Metropolis Valuation Act, 1869, under which the owner being liable to be rated is to be deemed the occupier.
- Powers of special sessions.** The justices in special sessions are to hear the appeal of which notice has been given to the assessment committee on or before the 21st November (sec. 42, sub-s. (9)), and which appeal is limited to the value of some hereditament; and any alteration in such value will only affect the rights of the ratepayers in such parish among themselves, and shall not of itself in any way alter the totals of the gross or rateable value of the list as settled by the assessment committee, but may form a reason for appeal to the assessment sessions and superior court: sec. 20.
- The assessment sessions.** In lieu of an appeal to a quarter sessions, inasmuch as the metropolitan district extends into several counties, a special court of appeal is created under the Act: secs. 23—26.
- Constitution.** This Court is to be appointed annually at the October sessions (or at such other time as the appointing body may fix), and is to be constituted of three justices of Middlesex (of whom the assistant judge is to be one), two justices of Kent, Surrey, and London (to be appointed by the court of aldermen): sec. 24.
- Same powers as a court of quarter sessions.** And by sec. 26, in all matters necessary for the execution of their duties they are to have the same jurisdiction and powers, and be in the same position, as a court of quarter
- (*a*) When the surveyor of taxes gives notice of objection or of appeal, the amount specified in his notice as being in his judgment the gross value of the hereditament referred to, shall be inserted in the list unless it be proved to the satisfaction of the assessment committee, special sessions, or assessment sessions, that such amount ought not to be so inserted: see 53.

sessions; and, subject to the express provisions of the Act, are to conduct their proceedings, be convened, and be in the same position, as near as may be, as if they were a court of quarter sessions (*a*).

Any ratepayer, and any surveyor of taxes, and any overseer, with the consent of the vestry of his parish (*b*), who may feel aggrieved by any decision of the assessment committee, on an objection made before them to which he was a party, or by any decision of special sessions, whether he was a party or not, may appeal against such decision to the assessment sessions: sec. 32.

Who to
appeal to
the assess-
ment com-
mittee.

And under the same section, any assessment committee in the metropolis, or in the county in which the parish is situate, any overseers in the metropolis, or such county, with the consent of the vestry of such parish (*b*), any ratepayer in the metropolis or such county, and any body of persons authorized by law to levy rates or require contributions payable out of rates in the metropolis or of such county, may appeal to the assessment sessions if they feel aggrieved by reason—

(1) Of the total of the gross value of any parish being too high or too low;

(2) Of the total of the rateable value of any parish being too high or too low;

(3) Of there being no approved valuation list of some parish.

Notice in writing of every appeal, whether to special sessions (before the 21st November, sec. 42, sub-s. 9) or the assessment sessions (before the 14th January, sec. 42, sub-s. 12), specifying the correction which the appellant desires to have made in the valuation list, must be served, within the above respective times, on the following persons, namely:—

Proceed-
ings on the
appeal.
Notice of
appeal.

In *all* cases on the surveyor of taxes of the district to which the appeal relates; and on the clerk to the assessment committee which approved the list wholly or partly questioned by the appeal;

When the appeal relates to the unfairness or incorrect-

(*a*) The court may, under approval of a Secretary of State, make rules of court, sec. 27, and form a table of fees, sec. 28.

are to be appointed, sec. 29.

(*b*) See sec. 144, Public Health Act, 1875, and 18 & 19 Vict. c. 120.

Places for holding the sessions

ness of the valuation of, or to the omission of a hereditament occupied by any person other than the appellant, or to the incorrectness of any matter stated in the list with respect to any such hereditaments, then on such person ;

If the assessment committee or a surveyor of taxes is the appellant, then also on the overseers of the parish to which the appeal relates.

Provided that it shall not be necessary to serve any notice of appeal on the surveyor of taxes in any case in which the appeal relates only to the rateable value of any hereditament (a) : sec. 33.

Duty of the clerk to the assessment committee.

The clerk of the assessment committee, on receiving notice of an appeal, is forthwith to serve notice thereof on the clerk of the petty sessions, or of the assessment sessions, as the case may require : sec. 33.

The hearing the appeal.

The special sessions or assessment committee will hear and determine such appeals as may be brought before them in such order as they may appoint. They may from time to time adjourn an appeal : sec. 34.

Adjourn appeal.

Further notice allowed.

If from any accident or mistake due notice of appeal had not been given, or if any additional notice of appeal appears to be required, they may, if they think it just, order notice of appeal to be given : sec. 34.

Confirm or alter list.

They may confirm or alter the valuation list, so far as it is questioned by the appeal, in such manner as they may think just ; but shall not make any alteration in contravention of the Act : sec. 34.

Clerk of the committee to attend the court.

The clerk to the assessment committee (or his deputy) must attend the court with the valuation list to which the appeal relates, and any alteration will be made by the justice acting as chairman of the sessions in that list, and he will place his initials against such alteration : sec. 34.

Making valuation list where none approved.

On an appeal to the assessment session, it appearing there is no approved valuation list for some parish, they may appoint some proper person to make one ; and he will have the same powers as those of the overseers.

The list is to be deposited or otherwise made known to the

(a) The surveyor of taxes has to fill in a column in the valuation list stating *his* estimate of the *gross value* of the property to be rated. A duplicate of the list has to be sent to him (sec. 8) for

such purpose, and which he must return to the committee within twenty-eight days. As surveyor of taxes he has the same right of appeal as others under the Act : sec. 19.

persons interested as the court may direct ; but in a manner as nearly as possible as provided in respect to the original list. The costs will be deemed part of the committee's expenses under the Principal Act : sec. 35.

The court may adjourn the hearing the appeal until the new valuation list is received. Adjourn-
ment of the
Court.

The costs of the appeal will be in the discretion of the court : sec. 39. Costs.

As to the recovery of the costs, see 17 Geo. 2, c. 38, s. 4 ; 11 & 12 Vict. c. 43, s. 27 ; 12 & 13 Vict. c. 45, s. 18 ; *R. v. Huntly*, 3 E. & B. 172 ; 23 L. J. M. C. 106.

Under sec. 40 a special case may be stated for the decision of a superior court, and that the writ of *certiorari* must be sued out within three months ; (see now the Summary Jurisdiction Act, 1879) : sec. 40. Special
case.

And so at any time after notice of appeal has been given, the parties by consent, or by order of a judge, may state the facts of the case in a special case for the opinion of a superior court, and to agree that a judgment in conformity with the decision of such court, and for the cost as may be adjudged, may be entered, on the application of either party, at a meeting of the assessment sessions to be held next or next but one after such decision, and such judgment may be entered accordingly, and be of the same effect as if given by the assessment sessions ; and if necessary the sessions shall hold a court for the purpose.

And notice of such decision is to be served on the clerk of the assessment committee which approved the list questioned by the appeal : sec. 40. And notice is also to be sent to the overseers and surveyor of taxes, of the parish to which the altered list relates, and such alterations are to be entered on the duplicates deposited with them : sec. 41. Notice to
overseers,
&c.

And notice of any alteration in the total of the gross and rateable value of the valuation list, is to be sent to the clerk of the managers of the Metropolitan Asylum District (*a*), and the clerk of such managers is to send notice of such alteration to every person and body of persons who have power to levy, or make any rate, or assessment, or require any contribution based on such total : sec. 41.

The valuation list will be in force for five years next after the 6th April succeeding that on which it is made : sec. 43. Duration
of the list.

The valuation list will be conclusive evidence of the gross The valua-

(a) See The Metropolitan Poor Act, 1867, 30 Vict. c. 6.

tion list,
conclusive
evidence.

value and of the rateable value of the several hereditaments included therein ; and of the fact that all hereditaments required to be inserted therein have been so inserted : sec. 45.

Service of
notices.

All orders and notices made or given by the assessment committee will be sufficiently authenticated if signed by their clerk. Notices, orders and documents to be served or sent to any person or body of persons corporate or unincorporate, may be either delivered to such person or the clerk of such body, or left at the usual place of abode of such person or clerk, or at the office of such clerk or body, or (if such abode cannot on reasonable inquiry be discovered) at the premises to which the order, notice, or document relates.

They may also be served by post prepaid letter, addressed to such person or to the office of such body, or to their clerk. The notice, &c., will be deemed to have been served at the time the letter would have been delivered in the ordinary course of post ; and it will be sufficient proof to show the letter was properly directed, prepaid, and posted : sec. 65.

Publication
of notices.

Any notice required by the Act to be published by the overseers shall, on the Sunday next following the receipt thereof, or the document to which the notice refers, and the two following Sundays, be published in the manner a rate allowed by justices is published : sec. 66. That is, by affixing the same on or near to the doors of all the churches and chapels in the parish. See 17 Geo. 2, c. 3, s. 1 ; 1 Vict. c. 45, s. 2.

Amend-
ment of
errors in
rate by two
justices.

Any person aggrieved by reason of any clerical or arithmetical error in a rate in the metropolis may apply to two justices, or a metropolitan magistrate, who may amend the rate so far as respects such error : sec. 71.

Omissions
from the
rate to be
corrected
by magis-
trate.

Whenever a person liable to be rated at the time the rate is made is omitted from any rate in the metropolis ; or if a person is described therein in a wrong name ; the overseers may, after giving to such person seven clear days' notice of their intention, apply to two justices or a metropolitan magistrate, who may hear the case and insert the name so omitted, or correct the name so wrongly entered. And such person will have the same right of appeal, against the insertion of his name in the rate, or the correction made, to the general quarter sessions holden next after such insertion or correction, in like manner as he might have had against the rate : sec. 72.

Appeal in
quarter
sessions.

Form of
rate.

Every rate is to be made in the form specified in the

fourth schedule of the Act, and be signed by the overseers. And the justices are not to allow the rate without the declaration by the overseers that the rate has been compared with the valuation list, and that the rate is made according to the value appearing in such list : sec. 73.

REMOVAL AND SETTLEMENT OF THE POOR.

The earliest statute relating to the poor was 12 Rich. 2, c. 7, awarding punishment on "beggars able to serve," and making provisions for "impotent beggars" who were to repair to the place of their birth. Of settle-
ments
generally.

By 11 Hen. 7, c. 2, further provision was made for them to resort to the hundred where they last "dwelled," or were last known, or were born. And by 19 Hen. 7, c. 12, to "where born, or where they had made their last abode for three years"—that is—as by 1 Ed. 6, c. 3, where they had been "most conversant" for three years.

By 1 Jac. 1 they were to be sent to the place of their dwelling, if they had any ; or to where they last dwelt by the space of *one* year ; if that could not be known, then to the place of birth (*a*).

The present law of poor-law settlement springs from 13 & 14 Car. 2, c. 12, s. 1, by which, upon complaint made by the churchwardens and overseers of the poor of any parish to any justice of the peace within forty days (*b*) after any person coming to settle in any tenement under the yearly rent of £10, any two justices of the division where any persons, that are likely to be chargeable to the parish, shall come to inhabit, might by their warrant remove such persons "to such parish where he or they were last legally settled either Formation
of the pre-
sent law of
settlements
of poor.

(*a*) It is remarkable how, in these later days, history is repeating itself with regard to the poor laws in their reverting back to the regulations of former times.

(*b*) The forty days, by 1 Jac. 2, c. 17, were to be accounted from the time of delivery of notice in writing of the abode, and number of family of the new comers to one of the churchwardens or overseers of the poor ;

and by 3 W. & M. c. 11, s. 4, the forty days were to be taken from the time of the publication of such notice in the church. The object of such notice was notoriety, that persons coming to inhabit or likely to become chargeable might be removed. The effect of this notice was taken away by 35 Geo. 3, c. 101, s. 3. See *post*, p. 454.

as a native, householder, sojourner, apprentice, or servant for the space of forty days at least."

Mr. East's
Act, 35
Geo. 3, c.
101.

"Actual
chargea-
bility."

Settlement
defined.

[*R. v. Had-
denham*,
15 East,
463.]

Who may
have a
settlement.

[*S. C. St.
Botolph v.
St. John*,
Burr. 367.]

Grounds
for acquir-
ing a settle-
ment.

Place of
settlement.

Exceptions

The 35 Geo. 3, c. 101 (1795), known as Mr. East's Act, enacted that no poor person should be removed under any order of removal from the place where such person was inhabiting to his or her place of last legal settlement until his or her *actual* chargeability to the parish in which such person should inhabit.

By the term settlement of the poor is to be understood a permanent right to take the benefit of the poor-laws in a particular parish or place maintaining its own poor. *Gambier* on Parish Settlement, 1, which settlement could formerly have been extensively communicated from person to person: *R. v. St. Mary, Cardigan*, 6 T. R. 116. The acquisition of the same right in another parish would, however, destroy the prior one, and the pauper was always to be removed to the place where his *last* legal settlement had been acquired; the pauper had no option in the selection of his place of settlement. See 13 & 14 Car. 2, c. 12.

The settlement may be acquired by all natural born subjects of the Queen, born in any part of her dominions annexed to the Crown of England. A foreigner whose country is at peace with England may gain a settlement, however, by occupation of a tenement. "The law of humanity," said Lord Ellenborough, "obliges us to afford him relief": *R. v. East-bourne*, 4 East, 103; *St. Giles's v. St. Margaret's*, 1 Sess. Ca. 97. See *post* as to Irish and Scotch families.

Settlements might be acquired as follows:—by birth, hiring and service, apprenticeship, renting a tenement, estate, office, payment of rates, or by holding a certificate. As to cumulative settlements not being known to the law, see *Edwards v. Bobbitt*, 1 M. & S. 120.

The settlements by hiring and service and by office were abolished by "The Poor Law Amendment Act, 1834," 4 & 5 Will. 4, c. 76, s. 64.

The abolition was, however, only prospective; but at this distance of time, and considering that derivative settlements have been abolished by 39 & 40 Vict. c. 61, s. 35, settlements by hiring and service and by office, being of a personal character, may be looked on as mostly obsolete.

A settlement by a poor person could be gained in any place or district having known limits, contributing to one common fund, raised and disbursed within it, for the relief of its own poor: *R. v. Rufford*, 1 Stra. 512.

But exceptions have modified this general rule.

By 54 Geo. 3, c. 170, s. 2, no person will acquire a settle- to the
ment in any district by reason of being born of a mother general
actually confined as a prisoner within a prison ; or any house rule as to
licensed for the reception of pregnant women under 13 Geo. place of
3, c. 82, ss. 3, 5, or other places appropriated for the charit- settlement.
able reception of pregnant women, in which such prison or
house shall be situate : *R. v. Manchester*, 4 B. & A. 504.

By section 3, a similar disability to acquire a settlement is Birth in
enacted in reference to the birth taking place in a house of house of
industry, or house for "the reception and care of the poor," industry.
in any district maintaining its own poor excepting as a settle-
ment "in the district, &c., by whom the mother of such
person was sent to, and on whose account the mother of
such person was received and maintained in, such house :"
R. v. St. Clement's Danes, 32 L. J. M. C. 25 ; *R. v. Coombes*,
25 *ib.* 59.

By sec. 4, prisoners for debt, or while in contempt of court,
will acquire no settlement.

By sec. 5, no toll-gate keeper, or person renting the tolls, Toll-gate
and residing in the toll-house, will acquire a settlement ; keeper.
nor under sec. 6, will any person maintained in a charitable
institution gain a settlement by residence therein.

By 59 Geo. 3, c. 12, s. 11, any house or building hired or House in
purchased under that Act, will in all questions of settle- occupation
ment be deemed and taken to be part of the parish for of parish.
which the same was purchased and used as a poor-house.

1 & 2 Will. 4, c. 42, provides for the obtaining of land
for the employment of poor persons ; but no settlement will
be gained by renting, or occupying, or paying parochial
rates for such land, either alone or with other land. So
also as to inclosed crown land : see 1 & 2 Will. 4, c. 59,
s. 1.

Under 4 & 5 Will. 4, c. 76, s. 33, guardians of parishes Union of
forming any "union," were empowered to agree that for the parishes.
purpose of settlement such parishes should be considered
as one parish. And by 7 & 8 Vict. c. 101, s. 56, for the
purposes of relief, settlement, removal and burial, the work-
house of any union or parish, and district school, will be
considered as being situate within the parish to which such
poor person is, or has been, chargeable. See *R. v. St.*
Clement's Danes, 32 L. J. M. C. 25 : see also 54 Geo. 3,
c. 170, s. 3 (*supra*).

The 9 & 10 Vict. c. 66, s. 1, made a residence of *five* years Residence
in a parish a ground for irremovability. The 24 & 25 Vict. in union.
c. 55, s. 1, reduced that period to three years ; and that to

constitute irremovability, a residence in *any part of the union* should have the same effect as a residence in any parish. The 28 & 29 Vict. c. 79, s. 8, further reduced the time for acquiring irremovability to *one* year; see a. p. 451.

And by 39 & 40 Vict. c. 61, s. 34, a person residing for the term of three years in any *parish* (*qq.*, union) (*a*), in such a manner and under such circumstances in each of such years as would, in accordance with the several statutes, render him irremovable, *he shall be deemed to be settled* therein until he acquire a settlement in some other parish (*qq.*, union) by a like residence or otherwise. But an order of removal on such settlement, if made on the evidence of the pauper, must receive corroboration: (see *post*, "Settlement by Residence").

Further, as to the union of townships, see 24 & 25 Vict. c. 55, s. 1; 27 & 28 Vict. c. 105, s. 1; under which the residence in any part of a union will have the same effect in reference to the provisions for the gaining a settlement as a residence in a parish: see *R. v. Bolton-le-Sands*, 35 L. J. M. C. 54; *R. v. Great Salkeld*, 33 L. J. M. C. 185; and such chargeability must be incurred before any legal settlement be gained in the union charged: *R. v. Amptill*, 2 B. & C. 847; see 24 & 25 Vict. c. 55, s. 1.

Casual
poor.

The "coming to settle" denotes that the party comes *animo morandi vel manendi*: mere casual poor are to be relieved in the parish or union where they may be, without being liable to be removed to their place of settlement: see *R. v. St. James, Bury St. Edmunds*, 10 East, 25. See also the converse case: *R. v. Oldland*, 4 A. & E. 929; also *R. v. Birmingham*, 14 East, 251; in which the distinction is drawn between the case of a starving vagrant, or a person who goes into a parish and there casually meets with an accident, and one who, meeting with an accident, has come into the parish *animo morandi*, and is an actual inhabitant.

What con-
sidered as
relief.

Relief given to or on account of a wife, or to or on account of any child or children under the age of sixteen, not being blind, or deaf and dumb, will be considered as given to the husband or father, or if such child or children be those of a widow the relief will be considered as given to such widow:

(*a*) By sec. 44, the words in the Act are to be construed as in the Poor Law Amendment Act, 1834, and the Acts amending the same; under the term "parish" it would seem, therefore, that "the resi-

dence in any part of a union will have the same effect as a residence in *the parish*:" 24 & 25 Vict. c. 55, s. 1 (1834). See also 31 & 32 Vict. c. 102, s. 34.

The Poor Law Amendment Act, 1834, 4 & 5 Will. 4, c. 76, s. 56 ; see *R. v. St. Mary, Islington*, 31 L. J. M. C. 233.

By 7 & 8 Vict. c. 101, s. 25, where a husband is beyond the seas, or in custody of the law, or confined in a licensed lunatic asylum as a lunatic or idiot, all relief given to his wife, or to her child or children, will, notwithstanding her coverture, be given to her in the same manner, and subject to the same conditions, as if she was a widow, subject to his liabilities in respect of such relief (a). And by 39 & 40 Vict. c. 61, s. 18, the like provisions will apply to a married woman living separate from her husband.

Where husband beyond the seas, or lunatic, or wife living apart from husband.

In either of the above cases, where the relief is given to a child under the age of sixteen, the intention is to make the parent removable in respect to such relief as much as in respect of relief actually and immediately given to the parent ; and the inference is that relief given to a child of greater age would not be relief given as to the parent, and the time of the child being in an asylum or otherwise would be deducted from the parent's residence so as to render them removable. *R. v. St. Mary, Islington*, 31 L. J. M. C. 233 ; *R. v. Shavington*, 17 Q. B. 48 ; 20 L. J. M. C. 194.

Relief to child under sixteen.

Children born of Irish or Scotch parents who have no settlement are entitled to their settlement by birth as soon as emancipated. *R. v. Preston*, 10 L. J. M. C. 22 ; 12 Ad. & Ell. 832. In *R. v. All Saints, Derby*, 19 L. J. M. C. 14, it was suggested by Coleridge, J., that on the desertion by the father, the children being removed to the place of their birth, should the father return, they could be removed with him to Ireland under the statute. See also *R. v. St. Giles*, 21 L. J. M. C. 26. In the absence of the father, the children would be as casual poor until they gained a settlement of their own. *Berkhamstead v. St. Mary, Northchurch* (Lord Hardwicke), 2 Bott. 51 ; also *Ellinor Conred's case*, 2 Bott. 17 ; Comb. 287.

Irish and Scotch families.

Where the father absconds, and the family becomes chargeable to a parish, without having any legal settlement, and he could not be found, the wife and children could not be removed to Ireland under 8 & 9 Vict. c. 117, s. 2, without the head of the family. *The Poor Law Commissioners of Ireland v. Liverpool*, L. R. 5 Q. B. 79 ; 39 L. J. M. C. 25 ; 10 B. & S. 921 ; 21 L. T. 636 ; 18 W. R. 376. See also 10 & 11 Vict. c. 33 ; 24 & 25 Vict. c. 76 ; 26 & 27 Vict. c. 89 ; *R. v. Great Claxton*, 7 B. & C. 615 ; *R. v. St. Margie*-

(a) See 31 & 32 Vict. c. 122, s. 33.

bone, 16 Q. B. 352 ; 20 L. J. M. C. 61 ; *R. v. St. Giles*, 21 L. J. M. C. 26 ; *R. v. Newchurch*, 32 L. J. M. C. 19 ; *R. v. Leeds*, 5 Q. B. 916 ; 13 L. J. M. C. 106.

Irremov-
able by
reason of
residence.

A poor person may gain a status of irremovability by a residence in a union for *one* year : 28 & 29 Vict. c. 79, s. 8. Under 24 & 25 Vict. c. 55, s. 1, three years were substituted for the five years required under 9 & 10 Vict. c. 66, s. 1. The 24 & 25 Vict. c. 55, s. 1, made the residence in the *union* of the same effect as a residence in any parish. *R. v. Bolton-le-Sands*, 35 L. J. M. C. 54.

Break in
residence.

Under this provision a break in the residence by a voluntary going away from the union (before 24 & 25 Vict. c. 55, s. 1, from the parish) to reside would be a disruption in the residence, and destroy the irremovability, and the burthen of proof to show there was the *animus revertendi* will be on the parties seeking to establish that the absence was not permanent. *R. v. Llanelly*, 20 L. J. M. C. 179 ; *R. v. Manchester*, 17 Q. B. 46.

When re-
movable by
reason of
sickness.

No person is removable by reason of relief in consequence of sickness or accident, unless such sickness or accident will produce, in the opinion of the justices making the order, permanent disability : 9 & 10 Vict. c. 66, s. 4.

The statement, on the warrant of removal, of the fact of the pauper's "permanent disability," cannot be controverted, no appeal lies. *R. v. St. Mary and St. Andrew, Whittlesey*, 32 L. J. M. C. 78 ; *R. v. Hardwick, or Priors Hardwick*, 12 Q. B. 168 ; 18 L. J. M. C. 177.

Form of
order.

Although the order need not negative that relief was made necessary by sickness or accident, yet, if such was in fact the cause, the justices ought to state it on their order ; its omission may be ground of appeal, and it may be shown that on the relief given the order ought not to have been made ; see *R. v. Priors Hardwick (supra)* ; *R. v. Goole*, 12 Q. B. 172.

It will not, however, affect the proceedings if at a subsequent period the illness appear to be curable. *R. v. Manchester*, 26 L. J. M. C. 1.

Temporary
absence.

The being absent temporarily for the fulfilling a contract, but with the intention of returning, is no break of residence. *R. v. Brighthelmstone*, 4 E. & B. 236 ; 24 L. J. M. C. 41. So also where a man, being out of work, went into the appellant parish, the place of his settlement, for the purpose of obtaining work or relief, and was there employed for five or six weeks and lodged in the workhouse, his wife and family during his absence continuing to reside in the same two

rooms as before, in the parish from which he had come, and were maintained by money out of his wages. At the expiration of the time of his temporary employment he returned to his family. From these facts there was held to be a clear inference of the *animus revertendi* from which no disruption in the residence arose. *R. v. Tacolnestone*, 12 Q. B. 157; 18 L. J. M. C. 44; 13 Jur. 80.

There must, however, be some place which can be considered as the pauper's residence, to which he could return after his temporary absence; but it is not necessary that the residence should be a house or even place appropriated for the purpose of a residence: *Cockburn, C. J., R. v. St. Leonard's, Shoreditch*, 35 L. J. M. C. 48. In that case the pauper had lived for sixteen years in the parish of St. Leonard's,—she was turned out of her lodgings,—she wandered about, chiefly in the parish, without any place to sleep at in the parish. One night she slept on the steps of a house in the parish, and then went out of the parish for shelter and food to a refuge, but not with the intention of abandoning the parish of St. Leonard's, for she came back to the parish in the day-time, and ultimately became chargeable to the parish, and an inmate in the workhouse. The Lord Chief Justice said, in his opinion a residence in the open air of this nature was as much "a residence" as if it were in a house; and as the absence in this case was only for a temporary purpose, the pauper had never broken the residence. "Where a person sleeps," said Blackburn, J., "is a matter forming an important element in determining where a person resides; but this is by no means conclusive on the point. *Shee, J.*, referred to *R. v. Hartfield v. Rotherfield*, 17 Q. B. 746; 21 L. J. M. C. 65; and *R. v. The Directors of the Brighton Poor*, 4 El. & B. 236; 24 L. J. M. C. 41. Blackburn, J., drew a distinction between *R. v. St. Leonard's, Shoreditch*, and *R. v. Stourbridge Union*, 34 L. J. M. C. 179, in which case the pauper, although he had left some clothes in his lodgings, was physically away from the parish, and there was no place which he could consider his residence, although he had the *animus revertendi* to take effect as soon as trade became better; in *R. v. St. Leonard's*, the woman had no place of residence out of Shoreditch to go to; her residence in Shoreditch continued until she had acquired another (*per Cockburn, C. J.*, and Blackburn, J.). See *Guildford v. St. Olave's*, 25 L. T. 803, Q. B.

In *R. v. Glossop*, 35 L. J. M. C. 148; L. R. 2 Q. B. 227; the inference pauper, who had lived with her mother in G., went into that pauper

What may be considered a place of residence.

would stay
away.

service in another parish, where she remained a month and then returned. She had taken her clothes with her, and intended to stop if her place suited. The residence in G. was held to be broken; and Blackburn, J., said: "It would be monstrous to say a person was constructively resident if, though he intends to return at some future time, there is no place to which he can return to reside." There was an inference in that case, that the pauper intended to stay away indefinitely if the place she went to had suited her. But where the pauper merely left the parish on visits to her friends, although with the intention of looking for work, there was no such intention of permanently residing away or to stay away permanently: in that case residence would not be broken. *R. v. St. Ives*, 41 L. J. M. C. 94; 7 L. R. Q. B. 467; 26 L. T. 393; 20 W. R. 657: see also *R. v. Worcester*, or *R. v. Birmingham (Unions)*, 43 L. J. M. C. 102; 9 L. R. Q. B. 340; 30 L. T. 357; 22 W. R. 572; *Knaresborough v. Pateley Bridge*, 25 L. T. 590, Q. B. But the residing in another union for only one night, the pauper not knowing he had removed out of his union, would break the residence. *Newark v. Glanford Brigg*, 2 Q. B. D. 522; 46 L. J. M. C. 285; 36 L. T. 793; 25 W. R. 42.

What time
excluded
from com-
putation in
residence.

To sec. I of 9 & 10 Vict. c. 66, there is a proviso excluding, in the computation of the time of residence creating irremovability, the time during which the pauper shall have been a prisoner in a prison: *R. v. Hartfield*, 17 Q. B. 746; 21 L. J. M. C. 65; or serving as a soldier (*a*), marine or sailor, or residing as a pensioner in Greenwich or Chelsea Hospitals, or being confined in a lunatic asylum, or house licensed for the reception of lunatics, or as a patient in an hospital, or during the receipt of relief from any parish, or shall be wholly, or in part, maintained by any rate or subscription raised in a parish in which such person does not reside, not being a *bond fide* charitable gift: but a removal of a pauper lunatic to a lunatic asylum will not be deemed a removal within the meaning of the Act. And by 11 & 12 Vict. c. 111, sec. 1, it is further provided (amending 9 & 10 Vict. c. 66), that where any person shall have a wife or children having no other settlement than his or her own, such wife and children shall be removable from any parish or place, from which he or she would be removable, notwithstanding any provisions in the 9 & 10 Vict. c. 66, and shall not be removable by reason of any provision of that Act.

(*a*) A militiaman while out training is within this proviso: *Horton v. Leeds*, 35 L. J. M. C. 38.

This amended proviso operates to render the wife or children irremovable only where the husband or father has acquired a status of irremovability: *R. v. East Stonehouse*, 3 Ell. & B. 596; 23 L. J. M. C. 137, *et idem*, 4 Ell. & B. 901; 24 L. J. M. C. 121; and applies to all children who have not become emancipated, whether living with or apart from their parents: *St. Olave's v. St. George*, 43 L. J. M. C. 15; L. R. 9 Q. B. 38; 29 L. T. 426; 22 W. R. 75. But where the child has been virtually abandoned by the mother, without any desire on her part to renew her natural rights, as where she had left her illegitimate child, when only a fortnight old, in the care of another woman, and had herself gone elsewhere without further notice of the child—it was held that the child, although of such tender years, had ceased to reside constructively with its mother, and was irremovable when it had, in fact, acquired a settlement of its own by residence. The object of the statute was to prevent a *united* family from being separated: *R. v. Leeds*, 48 L. J. M. C. 129; 4 Q. B. D. 323.

The proviso to 11 & 12 Vict. c. 111, s. 1.

Abandonment of child by the mother. Child may gain settlement.

The accidental circumstance of the husband's absence will not affect the removability of his family: *R. v. St. Ebbe, Oxford*, 18 L. J. M. C. 14; 12 Q. B. 137; the test is whether, if the husband had been present and become chargeable, would he have been removable: *R. v. Pott Sprigley*, 12 Q. B. 143; 18 L. J. M. C. 33. Before the wife is irremovable in the absence of her husband, there must be ample evidence to explain the cause of his absence, and to show he intended to return: *R. v. Llanelly*, 17 Q. B. 40; 20 L. J. M. C. 179; a temporary absence with an *animus revertendi* will not break the residence: *R. v. Tacolnestone*, 12 Q. B. 157; 18 L. J. M. C. 44.

Husband absent by accidental circumstance no effect on removability of family.

A widow to gain irremovability must herself have resided a sufficient time independently of her husband to render her irremovable: *R. v. Uudham*, 1 E. & E. 409; 28 L. J. M. C. 105; subject, however, to sec. 2 of 9 & 10 Vict. c. 66, restricting the removal of a widow until after twelve calendar months from her husband's death, if she so long continue a widow. But should, however, the widow continue to reside in the parish or union, so as to make up her full twelve months' residence therein, she may become irremovable under 28 & 29 Vict. c. 79, s. 6; any order which may then have been made could not be acted on, but the order would remain as evidence of the settlement in case of need: see *R. v. Glossop*, 17 L. J. M. C. 171; 12 Q. B. 117. An order unappealed against and acted on will put an end to the residence: *R. v. Seend*, 18 L. J. M. C. 12; 12 Q. B. 133.

Residence by a widow.

Pauper woman marrying a foreigner.

A woman who has resided sufficiently long in a union to be irremovable retains her status should she marry a foreigner having no settlement: *R. v. St. George-in-the-East*, L. R. 5 Q. B. 364; 39 L. J. M. C. 90.

But a wife may still be removed to a settlement derived from her husband where he has a settlement: 39 & 40 Vict. c. 61, s. 35, *The Divided Parishes, &c., Act, 1876*.

Desertion by husband; wife may become irremovable and gain settlement.

Under 24 & 25 Vict. c. 55, s. 3, a married woman deserted by her husband who, after desertion, shall reside for [one] (a) year in such manner as would, if she were a widow, render her exempt from removal, will not be liable to be removed from the parish (b) wherein she is resident unless her husband return to and cohabit with her. It appears that if a wife is turned out of her husband's house for acts of adultery, and she reside elsewhere apart from her husband, she may become irremovable by reason of such residence as residing apart from her husband, and that there would have been such a desertion of the wife as to bring her case within the section: *R. v. Maidstone Guardians*, 5 Q. B. D. 31; 49 L. J. M. C. 25; 28 W. R. 183; see also *R. v. St. Mary, Islington*, 5 L. R. Q. B. 448; 39 L. J. M. C. 137; 29 L. T. 426; 22 W. R. 75. But the mother does not become the head of the family so as to give the children a settlement.

But not as the head of the family.

Children under sixteen.

Under 9 & 10 Vict. c. 66, s. 3, no child under the age of sixteen, whether legitimate or illegitimate, residing in any parish with his or her father or mother, stepfather or stepmother, or reputed father, can be removed, nor any warrant be granted for such removal in case such father, mother, stepfather, stepmother, or reputed father may not lawfully be removed from such parish.

And by sec. 2, 24 & 25 Vict. c. 55, where a child under the age of sixteen years, residing with its surviving parent, shall be left an orphan, and such parent at the time of death had acquired an exemption from removal by reason of a continued residence, such orphan will, if not otherwise irremovable, be exempt from removal in like manner, and to the same extent, as if it had acquired for itself an exemption from removal by residence.

39 & 40 Vict. c. 61.

Under 39 & 40 Vict. c. 61, s. 35, a child under the age of sixteen will take the settlement of its father or widowed mother, as the case may be, up to that age, and will retain the settlement so taken until it acquire another. And by

(a) 28 & 29 Vict. c. 79, s. 8. & 25 Vict. c. 55; 39 & 40 Vict. c.

(b) "*Union*;" see sec. 1, 24 61, s. 34.

the same section, an illegitimate child will be removable to the settlement of its mother until such child acquires another settlement. Illegitimate children.

If any such child shall not have acquired a settlement for itself, or being a female shall not have derived a settlement from her husband, and it cannot be shown what settlement such child or female derived from the parent without inquiry into the derivative settlement of such parent, such child or female shall be deemed to be settled in the parish in which he or she was born : *ib.* Derivation settled-
ments
abolished.
39 & 40
Vict. c. 61,
sec. 35.

A continuous residence of three years in a parish, without being subject to any disability which might have rendered the party removable, will create a *permanent* settlement by residence : 39 & 40 Vict. c. 61, s. 34 : (see n. (b), p. 462). Three
years' resi-
dence
gives a
settlement.

Unmarried women, being with child, are no longer removable on that ground since 4 & 5 Will. 4, c. 76, s. 71 ; "single woman" in that Act includes a widow : *R. v. Wymondham*, 2 Q. B. 541 ; or a married woman whose husband is absent under such circumstances as would render the child when born a bastard (a) ; *e.g.*, where the husband is under "penal servitude," or imprisoned : *R. v. Collingwood*, 12 Q. B. 681 ; 17 L. J. M. C. 168 ; such child will follow the mother's settlement : 4 & 5 Will. 4, c. 76, s. 71. Unmarrie
d women,
enroute,
not re-
movable.

Children under seven years must be removed with their mother for nurture : *Wingford v. Brandon*, Carthew, 449 ; 2 Salk. 482 ; *R. v. Birmingham*, 13 L. J. M. C. 1. See *ante*, *R. v. Leeds*, p. 461. Children
under
seven.

Both in Dickinson's and Pritchard's Quarter Sessions, it is laid down that "before an order of removal is made the pauper ought to be summoned and examined as to his settlement." See 49 Geo. 3, c. 124, s. 4 ; and see remarks on this point under tit. Settlement by "Birth." Pauper
should be
examined
on his
settlement,
before re-
moval
order
made.

It is essential that a complaint should be made of the chargeability of the pauper, and appear on the order to have been made : see *Weston Rivers v. St. Peter's*, 2 Salk. 492 ; *R. v. Watford*, 16 L. J. M. C. 1 ; 9 Q. B. 626 ; *R. v. St. Giles-in-the-Fields*, 7 Q. B. 529. The complaint need not be in writing : *R. v. Bedingham*, 5 Q. B. 683 ; 13 L. J. M. C. 75. Complaint
essential.

The authority of the justices to act should also be shown on the order : *R. v. Stockton J.*, 7 Q. B. 520 ; *R. v. Casterton*, 14 L. J. M. C. 5, in which it was also held that the ser- Authority
of justices
should be
shown.

(a) Under 50 Geo. 3, c. 51, a married woman could be committed to the House of Correction for having a bastard child : Pat-
tison, J., *R. v. Collingwood* (*supra*).

vice in the margin is to be taken as a material part of the order.

Wife and children should be named in order.

The wife and children should be named in the order; and also the ages of the children who are removed; and that they have not acquired another settlement independent of their father or widowed mother, as the case may be: see *R. v. Bowling*, Burr. S. C. 178: 39 & 40 Vict. c. 61, s. 35.

That pauper had come to inhabit.

It should appear on the order that the pauper had come to inhabit: *R. v. Bury St. Edmunds*, 10 East, 25. But on a birth settlement no such residence is required: *R. v. Watford*, 16 L. J. M. C. 1.

Findings of justices must be positive.

The allegations of the findings of the justices must be stated positively and absolutely; saying, "we believe to be true" would be bad: *Stallingborow v. Harley*, 1 Sess. Cas. Ca. 131, p. 142; so saying, "according to our knowledge:" *R. v. St. Mary Ottery*, 2 Bott. 346.

Suspension of order.

In certain cases the order of removal as to parishes, 35 Geo. 3, c. 101, s. 2, or unions, 30 & 31 Vict. c. 106, s. 26, may be suspended in operation, as in the case of sickness, &c., the justices making an endorsement thereof on the order. But this must be done at the time of the making the order, the justices being after then *functi officio*: *R. v. Llanllechid*, 2 E. & E. 530; 29 L. J. M. C. 102; *R. v. Sculcoates*, 38 L. J. M. C. 33; L. R. 4 Q. B. 33. No act done in the interval of the suspension will alter the status of settlement: *R. v. St. John, Hackney*, 8 A. & E. 548; 35 Geo. 3, c. 101, s. 2.

Costs during suspension.

The costs incurred during the suspension of the order will be those of the parish to which the pauper has been removed, which may be levied by distress on the parish officers refusing to pay, and not paying or giving notice of appeal within three days after demand. Where the charges exceed £20: 35 Geo. 3, c. 101, s. 2; *R. v. St. John's, Hackney*, 2 A. & E. 548; or in case of a parish comprised in a union, the order for expenses may be made in favour of the guardians of the union comprising the parish to be reimbursed, and against the guardians of the union comprising the parish to which the order of removal was addressed: 30 & 31 Vict. c. 106, ss. 25, 26.

The removal under the order.

By 4 & 5 Will. 4, c. 76, s. 79, no poor person can be removed under any order of removal by reason of his being chargeable to be relieved by any parish until twenty-one days after notice in writing of his being so chargeable or relieved, accompanied by a copy or counterpart of the order of removal of such person, shall have been sent by post or otherwise by the overseers or guardians of the parish obtain-

ing such order, or any three or more of them, to the overseers of the parish to whom such order shall be directed. The officers of the parish may consent to receive the pauper before the expiration of the twenty-one days.

If notice of appeal against such order shall be received by the overseers or guardians of the parish within such period of twenty-one days, such poor person shall not be removed until after the time for prosecuting the appeal shall have expired, or if prosecuted, until after its final determination. See *R. v. Sussex*, 34 L. J. M. C. 69; 4 & 5 Will. 4, c. 76, ss. 79, 81; 11 & 12 Vict. c. 31, s. 9; and as to the time allowed for giving the notice of appeal, see tit. "Appeal."

Where notice of appeal.

Under sec. 4 of the Union Chargeability Act, 1865, 28 & 29 Vict. c. 79, every notice, statement, demand, or other document required to be given by any such guardians (of a union formed under the Poor Law Amendment Act, 1834) in respect of any order of removal, shall be deemed to be sufficiently authenticated if signed by their clerk in their name; and shall be deemed to be duly served upon the guardians to whom it shall be addressed if it be delivered to their clerk personally, or be left at his office, or be sent through the post, addressed to him at such office. And no grievance arises on which an appeal can be made until a service of the notice of chargeability with the order of removal has been so served in accordance: see *R. v. Shrewsbury (Recorder)*, 22 L. J. M. C. 98; 1 E. & B. 711, overruling *R. v. Brixham*, 8 A. & E. 375; 7 L. J. M. C. 87; *R. v. Shrewsbury*, 22 L. J. M. C. 2.

Authentication and service of notices.

11 & 12 Vict. c. 31, s. 3, provides for the clerk to the removing justices keeping and supplying copies of the depositions on which orders for removal are made.

Clerk to justices to keep copies of depositions.

A removal under a valid order is a complete disruption of, and puts an end to, the residence of the pauper: *R. v. Hatifax*, 17 L. J. M. C. 158; 12 Q. B. 111.

Effect of removal

The board of guardians of a parish, *when authorised by the Local Government Board to do so*, may apply for orders of removal, and defend appeals against such orders in the place of the overseers, and with the like powers and subject to the like liabilities as guardians of a union are entitled or are subject to in respect of such orders: 39 & 40 Vict. c. 61, s. 25. See also 11 & 12 Vict. c. 110, s. 8; 28 & 29 Vict. c. 79, ss. 2—7.

under valid order.

When boards of guardians may act.

Abandonment of the Order of Removal.

Abandon-
ment of
order of
removal.

The power always existed in the justices to abandon an order of removal which they had made: *R. v. Llanrhydd*, Burr. S. C. 658; *R. v. Diddlebury*, 12 East, 359. This may be done by *supersedeas* under their hands and seals before execution of the order and removal: *Pancras v. Rumbald*, Stra. 6; 2 Bott. 631, as stated by Bayley in *R. v. Alnwick*, 5 B. & A. 184. Or it may be so abandoned by the justices after the removal, if the pauper had been received and there had been no notice of appeal: *R. v. Yorkshire, W. R. (Longwood v. Halifax)*, 2 Q. B. 705.

*Super-
sedeas* by
justices
before ap-
peal.

Although it would be most convenient, as a mode of authenticating the abandonment of the order, to obtain the *supersedeas* by the justices, and in many cases such had been done, it was doubted by Coleridge, J. (*Cur. adv. vult.*), whether the justices are not *functi officio* as soon as they have sealed and delivered their order: in making the order they exercise a statutable power, and no statute in terms gives them authority to supersede the order when once made. "I should have thought," said his lordship, "that such a power was almost necessarily incident to that of making the order, so long as it remained unexecuted, and there are not wanting decisions which give countenance to this opinion." *R. v. Anglesat*, 12 L. J. M. C. 131, 133; 7 Jur. 701. See also *R. v. Yorkshire, W. R. (sup.)* 2 Q. B. 705.

Not after
appeal.

But *after* an appeal made against an order of removal the justices could not supersede their order. *R. v. Middlesex*, 11 A. & E. 809; 3 P. & D. 459; *R. v. Brighthelmstone*, 3 Q. B. 342; 2 G. & D. 88; and see *R. v. Norfolk*, 5 B. & Ald. 484.

General
power to
abandon
order.

By 11 & 12 Vict. c. 31, s. 8, it is enacted, that in any case in which an order shall have been made for the removal of any poor person, and a copy or counterpart thereof sent as by law required, it shall and may be lawful for the overseers or guardians of the parish who shall have obtained such order of removal, whether any notice of appeal against such order shall or shall not have been given, and whether any appeal shall have been entered or not, to abandon such order by notice in writing, under the hands (a) of such overseers or guardians, or any three or more of such guardians, to be sent by post (b), delivered to the overseers or guar-

(a) See *R. v. Worcester Recorder*, 5 Q. B. 508, n. (a) to *R. v. Surrey*, *ib.* 506.

(b) See *R. v. Slawstone*, 18 Q. B. 388; 21 L. J. M. C. 145; *R. v. Richmond*, 27 *ib.* 197.

dians (a), as aforesaid, of the parish to which such person is by the said order directed to be removed, and thereupon the said order, and all proceedings consequent thereon, shall become and be null and void to all intents and purposes, as if the same had not been made, and shall not in any way be given in evidence in case any other order of removal of the same person shall be obtained. And it is provided that in all cases of such abandonment the overseers or guardians of the parish so abandoning shall pay to the overseers or guardians of the parish to which such person is by the order directed to be removed, the costs which such overseers or guardians shall have incurred by reason of such order, and of all subsequent proceedings thereon; and such costs are to be taxed by the officer of the court; and will be recoverable as penalties and forfeitures within ten days after demand, under 4 & 5 Will. 4, c. 76; see also 11 & 12 Vict. c. 43, s. 27 (Jervis' Act), and 12 & 13 Vict. c. 45, ss. 5, 6 (Baines' Act).

The effect of the notice of abandonment is to take away all jurisdiction to hear and determine the matter of appeal by the quarter sessions: *R. v. St. Michael, Pembroke*, 21 L. J. M. C. 79; see *R. v. Shrewsbury & Hereford Railway Co.*, 25 L. T. 65. Although the sessions have no jurisdiction over the merits of the settlement, they may enter the appearance for the purpose of ordering the payment of the costs. *R. v. Townstall* and *R. v. Staley*, 1 Q. B. 876; 12 L. J. M. C. 72. *Ex p. Pontefract*, 3 Q. B. 391; *R. v. Norfolk*, 5 B. & Ald. 484.

Effect of notice of abandonment.

Apprentice.

Reference is made to tit. "Apprentice," as to the position of the apprentice in general, and the character of the indentures required. So also as regards the parish apprenticeship.

Settlement by apprenticeship has its origin from 3 & 4 Will. & Mary, c. 11, s. 8, enacting that "if any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement."

Settlement by apprenticeship.

Origin of the settlement by apprenticeship.

This was the earliest personal settlement which could be acquired.

(a) The notices may now be signed by the clerk to the guardians in their name; and will be duly served on the guardians if delivered to their clerk personally,

or left at his office, or sent by post addressed to him at such office: see *R. v. Shrewsbury Recorder*, 1 E. & B. 711, 720; 22 L. J. M. C. 98.

The forty days' residence.

Under 5 Eliz. c. 4, ss. 26, 31, 41, the service must be for seven years; the forty days' residence arises by inference from 13 & 14 Car. 2, c. 14, making settlements depend on residence. But the required inhabitancy of forty days need not be within the space of any one year. *R. v. Ilkestone*, 4 B. & C. 64; *R. v. Somerby*, 9 A. & E. 310; *R. v. Banbury*, 3 B. & Ad. 706.

As an apprentice.

The residence must, however, have reference to the apprenticeship: *R. v. Lincolnhorne*, 3 B. & Ad. 413; in which Lord Tenterden said: "It will be sufficient if the residence be in pursuance of the contract of apprenticeship, and in a place where, but for that contract, it would not have been." And in *R. v. Ilkestone*, 4 B. & C. 64, his lordship said: "The habitation must be in the character of an apprentice, and in some way or other in furtherance of the apprenticeship." See these cases collected *ante*, "Apprentice." It is in the parish where the apprentice may sleep and complete his last fortieth night that the settlement will be acquired. See *ante*, p. 159; *St. John v. St. James*, 1 Str. 594; *R. v. Brighthelmstone*, 5 T. R. 188; *R. v. Charles*, Burr. S. C. 707; *R. v. Burton upon Irwell*, 32 L. J. M. C. 102, *ante*, p. 160.

Not by indulgence.

A residence by indulgence, where no service is performed, as when the apprentice went into another parish on account of illness, would not confer the settlement. *R. v. Ribchester*, 2 M. & S. 135; *R. v. Barnesley*, 7 East, 381; *R. v. Ilkestone*, 4 B. & C. 64; *R. v. St. Mary, Bredin*, 2 B. & Ald. 382.

When with another master.

If any part of the service is with some person other than the master, it must be with the master's express consent: *R. v. Lydiard St. Lawrence*, 11 Ad. & El. 616.

Effect of the 39 & 40 Vict. c. 61, and residence under it.

It will be seen, however, that the three years' settlement by residence, to be acquired under 39 & 40 Vict. c. 61, s. 34, will very materially affect the settlements by apprenticeship, many an apprentice gaining his settlement under that Act.

Birth.

(See *ante*, "Evidence," pp. 223-4.)

The birth settlement.

The place of birth is *prima facie* the place of settlement. *R. v. Heaton Norris*, 6 T. R. 653; that is, until some subsequent and acquired settlement is shown to exist. *R. v. Newchurch*, 32 L. J. M. C. 19. See *ante*, 11 Hen. 7, p. 453.

Removals, birth settlements.

In *Spitalfields v. St. Andrew's, Holborn*, Fort. 307, it was said, "Birth makes a good settlement, and the labour lies on them where the child was born to find another." This

primitive axiom in settlement law has, since 11 & 12 Vict. c. 31, been freely acted on in general practice. The officers of a removing parish or union frequently carry their investigations no further than to inquire of the pauper where he was born, leaving all subsequent labour of finding the last legal settlement on the parish to which the pauper may be removed. This is, undoubtedly a practice exceedingly inconvenient and most burthensome to parishes in which such a birth is alleged by the pauper to have taken place.

In many of these cases the justices act solely on the affidavit or statement of the clerk to the guardians (without any corroboration, such as that required to support the pauper's own evidence under 39 & 40 Vict. c. 61, s. 34, *supra*), that he had been "informed and believed" that the pauper was born in a certain parish, and to which the pauper's removal is asked for; and such an order is then made,—the justices failing to examine the pauper touching any other legal settlement, should he have one, thereby causing much litigation and expense, which 11 & 12 Vict. c. 31, was passed expressly to avoid.

In a case in *Comberbach*, 478, Lord Holt, C. J., is reported to have spoken to the effect that, "if a pauper could it is fit he should, but it is not absolutely necessary he should, be examined." So also Lord Ellenborough, C. J., on 35 Geo. 3, c. 101, s. 2. See *R. v. Everdon*, 9 East, 101; and see also 49 Geo. 3, c. 124, s. 4, authorising a single justice to take the examination of an aged and infirm pauper unable to attend the sessions, and to report his testimony to the Bench. See also *R. v. Wykes*, Andr. 238; 2 Bott. 819.

The 11 & 12 Vict. c. 31, ss. 1—3, although passed for the excellent object of stopping the technical objections which were raised against the examinations, was never intended to give rise to rash or speculative removals, or to relieve the justices from due performance of their judicial duties in making the orders of removal otherwise than upon strictly legal evidence, as theretofore, concerning the *actual and last* legal settlement of the pauper.

Such hearsay evidence is clearly illegal, and in any other court would be inadmissible. It should never be admitted and still less acted on. But in such a matter the justices are "masters of the situation" since the 11 & 12 Vict. c. 31. And, however erroneously the justices may act in the reception of such evidence, or rather statements in lieu of evidence, it being a matter within their "discretion," no writ of *certiorari* will avail to correct the mischief. See

Orders made on hearsay evidence.

Duty of justices to examine pauper generally as to the settlement.

Examinations since 11 & 12 Vict. c. 31.

Inadmissibility of hearsay evidence as to birth settlements. (See p. 221.)

R. v. Middx. J.J. (Slade's ca.) 2 Q. B. D. 516; 46 L. J. M. C. 225; 36 L. T. 402; 25 W. R. 510; *R. v. Kent J.J.*, 41 J. P. 263. The only remedy is by appeal to the sessions.

Declarations of parents not evidence, *R. v. Erith.*

Distinction between what is evidence of pedigree, and place of birth.

Monkton v. The Atty.-General.

Hood v. Lady Beauchamp.

Principles stated by Lord Ellenborough, C. J., of objections to hearsay evidence.

Further objections.

As regards the evidence for proof of the birth of the pauper in a particular place, even the declaration of the father or mother as to the *place* of their own child's birth would *not* be evidence. *R. v. Erith*, 8 East, 539; and this case was upheld by Lord Brougham in *Monkton v. The Attorney-General*, 2 Russ. and Myl. 147, 159, where the distinction is drawn between what is evidence of a *pedigree*, and what may be evidence of a "*detail*" in the case. See Hubback on Succession, 468, where *Hood v. Lady Beauchamp*, 8 Sim. 26, is referred to, and in which case Shadwell, V. C., admitted a statement that A. B. was his grandfather, and resided at, &c.; but that was on a question of *pedigree* and reputation. The simple hearsay declaration of the place of residence, though *aliunde* shown to be made by a relative of the declarant, would not be received in evidence. In *Whittuck v. Waters*, 4 C. & P. 376, Parke, J., rejected hearsay evidence of the death of a *cestui que trust*, upon the ground that it was *not* a question of *pedigree*. So in *R. v. Chadderton*, 2 East, 27, the pauper stated "he had heard from his mother" who was dead, "that she had been relieved by Chadderton parish." Lord Kenyon, C. J., said, "The hearsay of the pauper's mother is *no* evidence." See also *R. v. Rishworth*, 2 Q. B. 476, 483, 485, 487; *R. v. Yelverton*, 6 Q. B. 801; *R. v. Eccles Bierlow*, 11 A. & E. 607.

In *R. v. Erith (supra)*, Lord Ellenborough, C. J., stated the principle of the non-admissibility of the pauper's hearsay evidence of the *place* of his birth; premising, that the only doubt which had been introduced into the case arose from improperly considering the question of *place* of settlement as one of *pedigree*. "The question was not," said the C. J., "*as in the case of pedigree, from what parents the child derived his birth, but in what place an undisputed birth, derived from known and acknowledged parents, had happened.*" The point thus stated turns on a single fact, *involving no question but that of locality, and therefore not governed by rules applicable to cases of pedigree*, and is to be proved, therefore, as other facts generally are proved, according to the ordinary course of the common law, that is, by evidence *to which the objection of hearsay does not apply.*" Another objection to the admission of the "hearsay" evidence, although made *in articulo mortis*, is, that the question involved in the settlement is one of law as well as fact. See

2 Starkie on Evid. 369 ; 3 *ib.* 24, 835. Phill. on Evid. 229, 6 ed. ; Taylor on Evid. 549, 7th ed. ; *R. v. Ferry Frystone*, 2 East, 55 ; *R. v. Aberquilly*, *ib.* 63. On this point in Burn's Justice of the Peace, tit. "Poor," 331 ; *R. v. Birmingham* and *R. v. Aston*, 8 L. J. M. C. 41 (*a*), are cited for the statement, *simpliciter*, that "the declaration of a deceased mother as to the time of birth is admissible in evidence upon a question as to the place of birth of the child, though the father be living." From the previous cases quoted this seems to be not strictly accurate as to the evidence of the place of the settlement ; the question in the Birmingham-Aston case was one of pedigree only, and not of settlement, and hence the distinction ; wherefore the ruling in *R. v. Erith* is not in any degree interfered with, but rather confirmed. See also the remarks on *R. v. Birmingham and Aston* in Hubback on Succ. 660 ; 1 Tay. Evid. 545, 7th ed. (*b*).

The evidence which *should* be before the justices as to the place of the pauper's birth is that of either of the parents : *Goodright v. Moss*, Cowp. 591 ; or that of some person who saw the mother in the parish just before and immediately after the event of the birth of the pauper, and saw the offspring, together with evidence of identity : *R. v. Petherton*, 5 B. & C. 508 ; *R. v. Trowbridge*, 1 Man. & R. 7 ; 7 B. & C. 252 ; *R. v. St. Mary, Leicester*, 3 A. & E. 644 ; *R. v. Crediton*, 27 L. J. M. C. 265 ; *R. v. Creech*, Burr. 765 ; *R. v. Buckelbury*, 1 T. R. 164. The copy of a parish register containing the entry of the pauper's baptism, combined with general evidence of identity, may be sufficient : *Creech St. Michael v. Pitminster*, Burr. S. C. 765 ; 2 Bott., 28. But the register of baptism *alone* will not be sufficient. *R. v. North Petherton*, 5 B. & C. 508 ; 2 D. & R. 325 ; *R. v. Clapham*, 4 C. & P. 29 ; *Walker v. Beauchamp*, 6 C. & P. 552 ; *R. v. Lubbenham*, 5 B. & Ad. 968.

So in one case the evidence was proof of the father and mother's marriage in Crediton parish in 1779, with evidence of the baptism of one child in 1780, and of two other children in 1782 and 1790, with the evidence also of the last child, that her first recollection was that of living with her parents in Crediton when the first child (the pauper) was about ten years older than herself, and was then

Evidence on which birth settlement should be made.

(*a*) Referred to in Burn's Just., as of 9 B. & C. 925, and 4 M. & W. 691 erroneously.

(*b*) There was a long struggle to make declarations of deceased

persons admissible in proof of particulars as to settlements, but which failed. See Tay. Evid. 549 (*n.*) 7th ed.

living with his parents: this was held to be sufficient evidence of a birth settlement: *R. v. Crediton*, 27 L. J. M. C. 265; 1 E. B. & E. 231.

By Certificate.

A poor person being liable to be removed within forty days from a parish into which he had come to inhabit, had the effect of preventing poor persons from going out of their own parish to obtain work, and they thereby more readily became a burthen on the poor-rates (*a*). The 8 & 9 Will. 3, c. 30, s. 1, authorised the parish officers to acknowledge any person as being settled in their parish by certificate, allowed by two justices, attested by two witnesses, and directed to the churchwardens and overseers of some other parish: upon delivering such certificate to the officers of the other parish, the poor person would be irremovable therefrom until *actual* chargeability. These certificates were common until 35 Geo. 2, c. 101, made *actual* chargeability the cause for the removal in lieu of the pauper being "*likely* to become chargeable."

These certificates were admissions, by the certifying parish, that those named therein were settled in such parish; and this was a binding acknowledgment as between the two parishes, and the certificate was evidence of the settlement.

The custom of granting these certificates has long ceased; and in practice they are now but seldom, if ever, met with. They could only arise on some remote derivative settlement, and as that class has been abolished by the 39 & 40 Vict. c. 61, s. 35, the subject need not here be further treated of; but reference, if the occasion should require, for the law on acknowledgment by certificates, is made to Vol. 4, Burn's Justice, tit. "Poor."

By Derivative Settlement.

Derivative
settle-
ments
abolished.

A most material alteration very considerably simplifying the law of settlements has been made on the passing "The Divided Parishes and Poor Law Amendment Act, 1876," 39 & 40 Vict. c. 61, which by s. 35, enacts that "no person shall be deemed to have derived a settlement from any other

(*a*) Under 13 & 14 Car. 2, c. 12, s. 3, when a poor person left his parish for harvest or other work, he was bound to carry with him a certificate that he had a habita-

tion in his parish; and on neglect, when his work was over, to return to such parish, he was under pains and penalties as a vagabond!

person, whether by parentage, estate, or otherwise, *except* in Exceptions. the case of a wife from her husband, and in the case of a child under the age of sixteen, which child shall take the settlement of its *father*, or of its *widowed mother*, as the case may be, up to that age, and shall retain the settlement so taken until it shall acquire another."

"An illegitimate child shall retain the settlement of its mother *until* such child acquires another settlement." See *R. v. Leeds*, *infra*, "Settlement by Residence."

"If any child in this section mentioned shall not have acquired a settlement for itself, or being a female shall not have derived a settlement from her husband, and it cannot be shown what settlement such child or female derived from the parent *without inquiring* into the derivative settlement of such parent, such child or female shall be deemed to be settled in the parish in which he or she was born."

Full effect will be given to this section, inasmuch as it will be read retrospectively as well as prospectively, both in the enacting part and in the exceptions. But it is, however, not retrospective so as to affect the settlement of a pauper who had acquired a birth settlement by attaining the age of sixteen *before* the passing of the Act; in which case the pauper was illegitimate: *Westbury-on-Severn v. Barrow-in-Furness*, 3 Ex. D. 88; 47 L. J. M. C. 79; 38 L. T. 315, S. P.; *Tenterden v. St. Mary, Islington*, 47 L. J. M. C. 81; 38 L. T. 485, C. P. D. See also *Barton Regis v. Liverpool*, 47 L. J. M. C. 62; 3 Q. B. D. 295; 37 L. T. 713, where there was a pending order at the time the Act was passed. (See sections 35 & 36.)

Children derive no settlement from the mother by her second marriage. See *Keynsham v. Bedminster*, and cases cited *infra*, under "Settlement by Parentage." Nor in the case of an illegitimate child does it take the mother's settlement acquired by marriage: *Manchester v. St. Pancras*, 4 Q. B. D. 409; 41 L. T. 218; 27 W. R. 884. In *Woodstock v. St. Pancras*, 4 Q. B. D. 1; 48 L. J. M. C. 1; 39 L. T. 256; 27 W. R. 229, S. C.; *R. v. St. Pancras*, Field, J., put the test—"Would the settlement have to be inquired into and ascertained?—this is the very thing which the Legislature has said shall not be done."

Under the exceptions,—"*except in the case of a wife Settlement from her husband;*" and "*if a female, shall not have of wife. derived a settlement from her husband,*" she is to take her birth settlement, it was held in *Great Yarmouth v. London, Clerk of the Peace*, 47 L. J. M. C. 61; 3 Q. B. D. 232; 37 L. T. 712; 26 W. R. 283, that, where the husband of a

Section
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tive.

Marriage
of the
mother
does not
change
child's
settlement.

criminal lunatic pauper had derived his settlement from his father in Gorleston, whither he had gone a few weeks after his birth to reside with his father's family, and he had no other settlement, nor had his wife any in her own right, the case was within the exception, and that an order of settlement was rightly made on the derivative settlement of the husband in Gorleston.

39 & 40 Vict. c. 61. The 35th sec. 39 & 40 Vict. c. 61, contemplates the "emancipation" of the child, that is, the gaining a settlement of its own. The right of the children to take the parent's settlement is at an end by obtaining a settlement of their own. *R. v. Bleasby*, 3 B. & A. 377; *R. v. Hardwicke*, 5 B. & Ald. 176; *R. v. Offchurch*, 3 T. R. 114; *R. v. Roach*, 6 T. R. 247. See also *R. v. Leeds*, *ante*, p. 461.

Former emancipation. Marriage: *R. v. Everton*, 1 East, 526; or the living away from the parents: *R. v. Uckfield*, 5 M. & S. 214; or remaining absent at, and after attaining twenty-one, might have formerly emancipated the child, although such absence was by compulsion. *R. v. Hardwicke (sup.)*; *R. v. Lawford*, 8 B. & C. 271; see also *R. v. Scammonden*, 8 Q. B. 349; 15 L. J. M. C. 30.

Present emancipation. The words of sec. 35 (above referred to) are, "that the child shall take the settlement of its father or of its widowed mother, as the case may be, up to the age of sixteen, and shall retain the settlement so taken until it shall acquire another."

Definition by Abbott, C. J., of ceasing to be under the control of the parents. Formerly, in the words of Abbott, C. J., in *R. v. Wilmington*, 5 B. & Ald. 525, the emancipation was gained by the pauper entering upon "a contract so as wholly and permanently to exclude the parental control." This will not be the present reading of the section; to gain emancipation another settlement must be "acquired." And which settlement may even be acquired by a mere infant (under sec. 34) (see *R. v. Leeds, sup.*) where, by the act of the parent all idea of the continuance of any further "parental control" over the child is excluded; in fact, where the child has become "deserted," and an independent "residence" has acquired a settlement: see *infra, R. v. Leeds*, "Settlement by Residence."

By Possession of Estate.

Founded on Magna Charta. No statute expressly creates any settlement by estate, unless the term "*sojourner*," as pointed out by Lee, C. J., in *R. v. St. Nyotts*, Burr. S. C. 132, apply. But Lord Ellenborough, C. J., in *R. v. Holm East Waver Quarter*, 16 East,

127, remarked: "This species of settlement does not depend upon any term in a statute; but it is an excepted case in the law, standing upon the rule that a man shall not be removed from his own." This right to reside on a man's own estate is founded on Magna Charta, which enacts that no man shall be disseised of his freehold.

In *R. v. Offchurch*, 3 T. R. 114, Lord Kenyon, C. J., Right restricted by 9 Geo. 1, c. 7. stated, that it was Lord Macclesfield who first held that as a man could not be disseised of his freehold, he was irremovable from it; and residing forty days on an estate of his own, irremovable, and gaining a settlement, were synonymous terms. "But that," said Lord Kenyon, "did not hold in all cases; for, by 9 Geo. 1, c. 7, a purchaser of an estate for less than £30 shall not acquire a settlement for any longer time than he resides upon it."

A residence of forty days on an estate, under a claim of right, although the taking possession had been in fact wrongful, but in which case there is an absence of fraud, and where the pauper is unconscious at the time that he is taking the possession wrongfully, and where the person entitled to the possession fails to take prompt measures to displace him, the settlement will be acquired. See *R. v. Staplegrove*, 2 B. & Ald. 527. Estate by Possession.

The pauper lived in a cottage, which came to him by descent, but which cottage the pauper's father had built upon "a waste," without the lord's consent; this gave a settlement. It was not for the justices of the peace to determine the man's title: *Ashbottle v. Wyley*, Stra. 608; *S. C. R. v. Wyley*, 2 Sess. Cas. 115; 2 Bott. 610. The same strictness of proof is not required to ascertain the title to an estate in cases of settlement as would be necessary to support an ejectment; *Wilmot, J., R. v. Cold Ashton*, Burr. S. C. 444; *R. v. Butterton*, 6 T. R. 554; see *R. v. Chew-Magna*, 10 B. & C. 747; *Doe d. Wilkins v. Marquis of Cleveland*, 9 B. & C. 864.

By 9 Geo. 1, c. 7, s. 5, no person will be settled in any parish by virtue of any purchase of an estate whereof the consideration money for such purchase does not amount to £30 *bonâ fide* paid, for any longer time than such person inhabit in such estate, and will then be liable to be removed to the parish where last legally settled before such purchase and inhabitancy. By purchase.

The word "purchase" is not to be taken in its largest extent, but is confined to cases of pecuniary consideration: *R. v. Marwood*, Burr. S. C. 386; 2 Bott. 615; *Doe v. Meyrick*, 3 Tyrw. 916; *R. v. Great Driffield*, 8 B. & C. 684,

and remarks there made in *Burclear v. Eastwoodhay*, 1 Stra. 163. The coming to an estate by devise or gift, or settlement on marriage, is not in this sense the taking an estate "by purchase," requiring the "consideration:" *id.*, and *S. P. R. v. Ingleton*, Burr. S. C. 560; 2 Bott. 621. So where the consideration is natural love and affection, and £10: *R. v. Upton*, 3 T. R. 251. So on a surrender of leases the lord makes a grant of the same premises on a nominal fine and rent: *R. v. Lyddlinch*, 4 B. & Ad. 150; see also *R. v. Hatfield Broad Oak*, 3 B. & Ad. 566. But a grant which is *not voluntary*, is a "purchase" requiring the £30 consideration: *R. v. Warblington*, 1 T. R. 241; *R. v. Hornchurch*, 2 B. & A. 189; see also *Wendron v. Stithians*, 4 E. & B. 147; 24 L. J. M. C. 1; *R. v. Hagworthingham*, 1 B. & C. 634; 3 D. & R. 16.

If, however, the purchase-money be under £30, should the owner reside on his estate, he will be *irremovable*: *R. v. Martley*, 5 East, 40. On his residence there for one year the irremovability would ensue under 28 & 29 Vict. c. 79, s. 8 (*infra*), with an absolute settlement on his residence for three years: 39 & 40 Vict. c. 61, s. 34.

The con-
sideration
money.

The consideration money must, *bonâ fide*, amount to £30 paid.

Other considerations than those stated on the deed may be proved. The money *actually* paid is the true consideration; so where the sum paid by the purchaser *bonâ fide* was £30, but the deed, and receipt endorsed, only expressed it as £28, parol evidence was held to be admissible to prove *other* considerations than those on the deed: *R. v. Scammonden*, 3 T. R. 474; see also *R. v. Llangannor*, 2 B. & Ad. 616; *R. v. Skeffington*, 3 B. & Ald. 382; *R. v. Wickham*, 2 A. & E. 567; *R. v. Great Wakering*, 5 B. & Ad. 971.

The fine to the lord may be combined with the money paid to the vendor of copyhold land to form the full consideration: *R. v. Cottingham*, 7 B. & C. 603.

It is immaterial whether the purchaser provides the money, or borrows it on credit: *R. v. Chailey*, 6 T. R. 755; or that the amount is a debt due from the vendor: *R. v. Stackland*, Burr. S. C. 169; or mortgages the estate to raise the money. The criterion is that the full £30 is paid to the vendor: *R. v. Tedford*, Burr. S. C. 57; see *R. v. Mattingley*, 2 T. R. 12; *R. v. Olney*, 1 M. & S. 387.

Expendi-
ture on

The laying out money on the improvement in value of the estate *after* a purchase of property for which less than

£30 was paid will not gain a settlement: *R. v. Dunchurch*, estate after Burr. S. C. 553; 1 Bla. Rep. 596. But where the vendor purchase.
agreed to build a house according to specifications on the land, at an annual rent-charge, on a lease for three lives of 25s., and the building cost £85, and the house being built the lease was granted; this was held to be a *bonâ fide* payment of a consideration of £30 for the purchase and the settlement gained: *R. v. Belford*, 32 L. J. M. C. 156; 3 B. & S. 662; see also *R. v. Stanfield*, Burr. S. C. 205.

To confer the settlement by estate the party must have A legal or either a legal or an equitable title to an interest in possession: *R. v. South Lynn*, 5 T. R. 664; *R. v. Chailey*, 6 *id.* 755; *R. v. St. Mary*, 21 L. J. M. C. 106. It need not be equitable, estate.
beneficial: *R. v. Stone*, 6 *id.* 295; *R. v. Aslackby*, 5 A. & E. 200; 6 N. & M. 582. Executors, administrators, and next-of-kin may gain the settlement: *R. v. Sundrish*, 1 Sess. Ca. 200; 2 Stra. 983; *R. v. Horsley*, 8 East, 405; in *R. v. Canford Magna*, 6 M. & S. 355, the widow, her daughter and son-in-law, occupied a leasehold house of the deceased husband's for more than thirty years, but *no administration* was taken out; no settlement was gained; and the same point was decided in *R. v. Okeford Fitzpaine*, 1 B. & Ad. 254; and see also *R. v. Berkswell*, 1 B. & C. 542; 3 D. & R. 9.

A mortgagor in possession may acquire the settlement: *R. Mortgagor v. St. Michael's, Bath*, Doug. 630; the living on mortgaged in possession.
premises must be as owner in possession, and not, for instance, for the purpose of overlooking some repairs: *R. v. Catherington*, 3 T. R. 771; a fraudulent possession will vitiate the settlement: *R. v. Edlington*, 1 East, 288.

A guardian in socage residing on his ward's estate for Guardians.
forty days gains the settlement. "The only difference," said Lord Ellenborough, "between the cases of an executor or administrator and of a guardian in socage is, that the one is accountable for the profits by statute, and the other at common law." The law considers a guardian in socage as entitled to the possession of a ward's property, and incapable of being removed from it by any person; such a guardian has not the mere office or authority, but an interest in the ward's estate: *R. v. Oakley*, 10 East, 491; see also *Wade v. Baker*, 1 Lord Raym. 131.

The father, as the natural guardian of his child who comes to an estate by devise and not by descent, is not a guardian in socage and gains no settlement, having no interest in the land: *R. v. Sherrington*, 3 B. & Ad. 714. It may be otherwise as to copyhold where there exists no custom of

the manor for appointing a guardian : *R. v. Wilby*, 2 M. & S. 504.

There can be no guardian in socage of an equitable estate ; there can be no such guardian except where the heir takes by descent : Holroyd, J., *R. v. Toddington*, 1 B. & Ald. 560.

Equitable
interest
in the
purchased
estate.

Though an equitable estate is sufficient to confer a settlement, a questionable right to go to the court to enforce that right is not : see Coleridge, J., in *R. v. St. Margaret, Leicester*, 2 Q. B. 559. There must either be an estate or interest *purchased*, that is, a definite interest for which the party contracts at the time of making the contract, and one which a court of equity would put the person claiming it into complete possession of, and protect him against any attempts to disturb his enjoyment of it. A *cestui que trust* has a sufficient interest in the land to gain a settlement ; but there may be a distinction between an equitable estate and a mere equitable right (see Holroyd, J., *R. v. Toddington*, 1 B. & Ald. 560), in the case of constructive trusts a settlement is not gained. So where a proposed purchaser is let into possession of an estate upon consideration of payments to be made by instalments ; but on failure of the payments the contract was rescinded, this was not such a possession under an equitable interest as to gain the settlement : *R. v. Geddington*, 2 B. & C. 29 ; 3 D. & R. 403 ; see Bayley, J., in *R. v. Horn-den-on-the-Hill*, 4 M. & S. 562 ; *R. v. Long Bennington*, 6 M. & S. 408 ; *R. v. Woolpit*, 2 D. & R. (Mag. Ca.) 272 ; 4 D. & R. 456, and cases cited in full in 4 Burns' Jus. Peace, " Poor," 621—626.

Trustee
and *cestui*
que trust.

The questions whether a trustee or a *cestui que trust* gains a settlement are, is there any *beneficial* interest, and whether there is an *equitable estate*. This class of estate is not like that by purchase under 9 Geo. 1, c. 7, s. 5 ; but if an estate coming to the pauper by operation of law, so the devisee of an equity of redemption has such an estate as will confer a settlement by residence of forty days in the parish : *R. v. Aslackby*, 5 A. & E. 200 ; 6 N. & M. 582 ; *R. v. Ratcliffe*, 9 Mod. 167 ; *R. v. Natland*, Burr. S. C. 793 ; *R. v. Wivelingham*, confirming *R. v. Natland*, 2 Dougl. 767.

Where a testator has devised freehold for sale within six months after his wife's death, and to be then equally divided amongst his children ; one of the co-heiresses resided on the devised property for more than forty days after the wife's death. Both a legal and equitable title was in the co-heiress, with a right to reside on the estate until the trustees

executed their trust for sale, and she gained a settlement : *R. v. Burgate*, 23 L. J. M. C. 143.

A schoolmaster, by his appointment under the terms of a will, may have such a use and occupation of a school-house and premises rent free, and with a salary, as to give him a title in the premises, as coming into them not by purchase, as under 9 Geo. 1, c. 7 ; nor by renting, under 13 & 14 Car. 2, c. 12 ; but in the character of a *cestui que trust*, residing upon what was, for the time, substantially his own.

An executor or administrator may acquire a settlement by residing the forty days upon household property. *R. v. Sundrish*, 1 Sess. Ca. 200 ; 2 Stra. 983 ; and *R. v. Widworthy*, Andr. 4 ; Burr. S. C. 109 ; 2 Bott. 612. Where Probyn, J., states the general rule as being well established, "that if a pauper come to an estate by inheritance, or as executor or administrator, be it of ever so small a value, he is irremovable ; and if he remain forty days in possession and inhabitancy, he gains a settlement." And the value is immaterial : *R. v. Uttoreter*, Burr. S. C. 538 ; 2 Bott. 620. An executor whose estate is under £10 a year rental may gain a settlement : *R. v. Stone*, 6 T. R. 295 ; and there is no distinction between a tenancy from year to year and a tenancy for a term of years ; each are entitled to estovers, *ib.* : and see *R. v. Painswicke*, Burr. S. C. 783 ; 2 Bott. 627 ; *R. v. Long Whittenham*, 4 Doug. 193, where the right to reside and take estovers is called "the right of *quarantine*."

Executors
and ad-
ministra-
tors.

But the administration must have been taken out during the existence of the term, and also before the order of removal has been made, for at such time of the making the order the pauper would have gained no settlement, because nothing could vest in him before administration had been granted. And if the order was good when made, it could not be quashed on matter happening *ex post facto*. *R. v. Widworthy (supra)* ; see *R. v. Wyley*, 2 Sess. Ca. 115 ; 1 Stra. 908 ; 2 Bott. 610 ; *R. v. Horsley*, 8 East, 405.

An administration to a tenancy at will is not sufficient ; see *R. v. Widworthy, supra*.

A settlement is not gained by a next of kin of a lessee without administration. *R. v. Horsley, sup.* ; *South Sydenham v. Lamerton*, 1 Stra. 57.

The mere right to dower without any assignment is not sufficient to confer a settlement ; but it was said, as she would be entitled to remain forty days (a) and to have estovers

Under
dower.

(a) Or, as expressed in *R. v. Long Whittenham*, 4 Doug. 193, she acquired her settlement in right of her "quarantine," a

under Magna Charta, she might by residence for that time have a claim for the settlement in the parish: *R. v. Painswicke (supra)*; Co. Litt. 393; 2 Bl. Com. 132; Gilb. Ten. 26; Gilb. Uses, 356; *Doe v. Nutt*, 2 C. & P. 430; see 3 & 4 Will. 4, c. 105. The widow acquires an estate of freehold by the assignment, without livery of seisin, because the dower is one of common right. 1 Inst. 35 a.; *Rowe v. Power*, 2 N. R. 1.

Nor before assignment of dower has the widow such an interest in the land that she is irremovable from the parish in which the land lies. *R. v. Northwold Bassett*, 2 B. & C. 724; 4 D. & R. 276.

Dower.

The wife is entitled to her dower of all real hereditaments, whether corporeal or incorporeal, unless there be some special custom to the contrary, and of all liberties and profits savouring of the realty wherein the husband is seised: Co. Litt. 32 a.; 1 Inst. 40 a.; Litt. s. 53; Cro. Eliz. 280, and out of which estates the dower may spring. See note (2) 4 Petersdorff's Abr. "Dower," 133.

In a case where it is necessary for the widow to take out letters of administration, see *R. v. Barnard Castle*, 2 Ad. & Ell. 108; 4 Nev. & M. 128.

Estate in remainder or reversion.

To gain a settlement the possession by the pauper must be of an immediate estate, and not of one in which he has only an expectant interest on the termination of some existing interest; an estate of which he may be disseised: *R. v. Ringstead*, 9 B. & C. 218; 4 M. & R. 67; *R. v. Elington*, 4 T. R. 177; *R. v. Willoughby-with-Sloothby*, 10 B. & C. 62; 3 M. & R. 32.

It was held that a settlement was gained when the *owner*, who had become entitled to the estate as heir, had let the property, but had undertaken to sink a well on it, and for that purpose resided on the premises for over forty days as a lodger: *R. v. Houghton-le-Spring*, 1 East, 247; see *R. v. Catherington*, 3 T. R. 771. But a mortgagor living on the premises mortgaged, but *not* in possession as owner, and only for the purpose of overlooking certain repairs, was in that instance held to gain *no* settlement.

By right of the wife's estate.

A husband may acquire his settlement by living on the estate which his wife has to her own use and benefit. The wife has the right to reside on her property, and to commu-

period of time which originally consisted of forty days. One origin seems to have been "from the forty days in the essoign of

child birth allowed by the Norman customs." Drayton. Selden.

nicate that right to her husband: *R. v. Offchurch*, 3 T. R. 114. So also may the husband of an administratrix gain a settlement: *Mursley v. Grandborough*, 1 Stra. 97. Or where the husband's residence is on property purchased by the wife before marriage; and such settlement is communicated to the wife: *R. v. Ilmington*, Burr. S. C. 566; 1 Bl. Rep. 598. Also a man who marries a woman who is a yearly tenant of premises, although at a less rent than £10 a year, gains a settlement by estate by a forty days' residence: *R. v. North Amey*, 3 B. & Ad. 463. See also *R. v. Dorstone*, 1 East, 296; *R. v. Ynyscynhaearn*, 7 B. & C. 233; 1 M. & R. 77 (M. C.); See also where the woman is only a weekly tenant: *R. v. Thornton*, 29 L. J. M. C. 162.

Where a woman is in possession of an estate after her husband's death, and resides there, paying rent and taxes without taking out administration, and marries, and with her husband continues to pay rent for several years; it seems doubtful what inference is to be drawn from this position. If she became the *tenant*, her second husband would acquire the settlement; but if she occupied as the representative of her first husband he would not. On the conclusion to be drawn, the Court was evenly divided in their judgment: see *R. v. Barnard Castle*, 2 Ad. & Ell. 108; 4 Nev. & M. 128.

Forty days' actual residence either on the estate or in the parish where the estate may be, and whilst the interest in the estate exists, is required to gain a settlement. But such forty days need not be consecutive: *R. v. Martley*, 5 East, 40; *Ryslip v. Harrow*, 2 Salk. 524; 2 Bott. 673; *R. v. Sowton*, Andr. 345; *R. v. St. Nyotts*, Burr. S. C. 132; 2 Bott. 676; *Wookey v. Hinton Blewett*, 1 Stra. 576; *R. v. W. Sheffield*, Burr. S. C. 307; see also *R. v. Knaresborough*, 16 Q. B. 446; 20 L. J. M. C. 147 (a). The residence on the estate.

The husband's residence cannot be made up by that of the wife. The father, whilst alive, is the head of the family, and the children must take their settlement from him. *Berkhamstead v. St. Mary Northchurch*, 2 Sess. Ca. 182; 2 Bott. 51. See also *R. v. Carshalton*, 6 B. & C. 93; 9 D. & R. 132.

Lord Hardwicke, C.J., said in *Berkhamstead v. St. Mary, Northchurch*: "As to the case of foreigners or Scotchmen (b)

(a) Under the old law, when a man came to a place, on the first day he was regarded as a stranger; on the second as a guest; and on the third as an inhabitant; and a place of settlement (which is a more modern term, and has

arisen from the Acts of removal) is a place of habitation: *Harrow v. Edgware*, Fol. 257; 2 Bott. 608, E. T. 11 Anne.

(b) Irishmen may be here included: see *infra*, p. 457.

who have no settlements, they are singular cases, and the wife gains a settlement through necessity; but there never was an instance where the wife was held to acquire a settlement during *the life* of her husband; the wife's inhabitancy with her children is not that of her husband. A *feme covert* cannot by residence gain a settlement for her husband." See *R. v. Maidstone*, 5 Q. B. D. 31; 49 L. J. M. C. 25; 28 W. R. 183, as to the wife's settlement where the husband has deserted her.

By hiring and service and office. The Poor Law Amendment Act, 1834, having abolished the acquiring a settlement by hiring and service, and by "office" after that date; and the 39 & 40 Vict. c. 61, s. 34, having abolished all derivative settlements, the persons who could have retained a settlement of this class must now be but seldom, if ever, met with; and, therefore, the reader is referred, for the general law on those subjects, to the elaborate work on "Poor," edited by Mr. J. E. Davis, being Vol. IV. of Burn's Justice of the Peace, and in which every authority has been most carefully collected.

Effect of Order not Appealed against.

Order must be made within jurisdiction. The order, however, to be binding, must have been made within the jurisdiction of the justices who made it; otherwise, although not appealed against, it will be totally void. And this jurisdiction should appear on the face of the order. No distance of time will cure the defect or prevent an objection to it being raised; there is a maxim that *quod ab initio non valet tractu temporis non conualescet*. And an order which was void at the time it was made, because made without jurisdiction, cannot become a valid order by lapse of time. See Lord Kenyon, C. J., in *R. v. Chilverscoton*, 8 T. R. 178. In *R. v. Stottford*, 4 T. R. 596, the order was voidable only on appeal, and would therefore be binding.

How far conclusive. The facts stated in the order of removal are also conclusive as proof against the parish; and so also the facts which form the necessary steps to the decision, but they must be necessary steps or the rule fails and they become collateral matter only. *R. v. Hartington*, 4 E. & B. 901; 24 L. J. M. C. 98. It is conclusive evidence of a marriage. *R. v. Northfeatherston*, 1 Sess. Ca. 154; *Nymphsfield v. Woodchester*, 2 Sess. 1172; *R. v. Silchester*, Burr. S. C. 551; *R. v. St. Mary, Lambeth*, 6 T. R. 615; describing a woman as a "widow," raising the presumption that she was removed to the place where her husband was settled. Lawrence, J., *R. v. Rugeley*,

8 T. R. 620. And Le Blanc, J., said that *R. v. Silchester* and *R. v. St. Mary, Lambeth*, show that an order unappealed from is conclusive, though the party be removed under a wrong addition; for in both those cases the woman was removed as "the wife," though in fact she was not the wife; yet it was holden that the parties were precluded from disputing the settlements gained upon subsequent removals. "The result" (said Le Blanc, J.) "of all the cases seems to be this: an order of removal unappealed against is conclusive; an order of removal of a woman, though not as wife, is conclusive of the settlement of the husband as well as the wife; and the circumstance of the party being removed under a wrong description does not take the case out of the general ruling" (*ib.*). See also *R. v. Towrester*, 4 Doug. 240; *R. v. Hinworth*, 2 Bott. 115; *R. v. Corsham*, 11 East, 388.

An order of removal of a pauper is the adjudication of a competent legal authority; and as said by Buller, J., "There is no proposition in the law of settlement more clear than this, that an order of removal unappealed against is conclusive against all the world." *R. v. Kenilworth*, 2 T. R. 598; see *Malendine v. Hudson*, Fol. 273; *R. v. Brighthelmstone*, 14 L. J. M. C. 137; 7 Q. B. 549. Even between two other parishes, it is in effect a statutable certificate. *R. v. Corsham*, 11 East, 388. This is, however, only applicable up to the time of the order being made; it may be rebutted by some subsequently acquired settlement, on which a new order may be made. *R. v. Willoughby*, 4 A. & E. 143.

Where children, who had been born in England of *Irish* parents (and the same would apply to a Scotch family), who have not gained a settlement, had been removed to their place of birth when deserted by their father after the death of their mother, upon the return of the father they might be removed with him under 8 & 9 Viet. c. 117, s. 2, to Ireland as part of his family: the children were irremovable without him. *R. v. All Saints, Derby*, 19 L. J. M. C. 14; 13 Jur. 1100; see this case *ante*.

Effect of Confirming or Quashing an Order on Appeal.

In *Mynton v. Stony Stratford*, 2 Salk. 527, Holt, C. J., and the Court held that: "If on appeal to the sessions an order be discharged, that judgment is binding only between the parties; but when upon appeal an order is confirmed, that is conclusive to all persons as well as to the parties, for

Effect of
confirming
or quashing
an order of
removal.

it is an adjudication that this is the place of the party's last legal settlement."

So in *Little Bitham v. Somerby*, 1 Stra. 232, the Court said: "An order of reversal is final only between the two parishes; but if it be confirmed it is final as to all the world, unless upon a subsequent new settlement appearing." See also *R. v. Bradenben*, Burr. S. C. 394. And they would be estopped from inquiring into another settlement gained before that time: *Helston v. St. Bride's*, 22 L. J. M. C. 65; 1 E. & B. 583; *R. v. Wick St. Lawrence*, 5 B. & Ad. 526. And so it would be conclusive as to a derivative settlement. *R. v. Catterall*, 6 M. & S. 83.

Quashing
does not
bind third
parties.

Though the quashing of an order of removal is only binding and conclusive between the immediate parties to the appeal, *St. Michael's, Beddington, v. Kingston Bousey*, 2 Salk. 486, it does not conclude a third parish, which may be able to give better evidence than the other could, from proving the pauper was settled in the appellant parish: *per* Lord Hardwicke, C. J., *R. v. Cirencester*, Burr. S. C. 17; *R. v. Bentley*, *ib.* 425.

Quashed
not on the
merits.

An order quashed on mere matter of form is not conclusive, and a fresh order may be obtained: see *R. v. Pixley*, 7 Jur. 579; also *R. v. Kingsclere*, 3 Q. B. 388; *R. v. St. Anne's, Westminster*, 9 Q. B. 878; 16 L. J. M. C. 41. But where the order was quashed generally it was held to be *prima facie* evidence of, but not absolutely, an estoppel; and it is open to the respondents to show that the decision was on a matter of form only. *R. v. Leeds*, 11 Jur. 1077.

It is a question whether in deciding on "form" only, the sessions have not in fact decided on the merits, and disposed of the interests of the parties, when the order will be conclusive. Thus, where the Court quashed an order on the ground that the examinations disclosed no settlement, a decision on this ground was held to be, "though not exactly on the merits," still binding as one which was conclusive and an estoppel to any other removal. *R. v. St. Mary, Lambeth*, 7 Q. B. 587; 14 L. J. M. C. 133.

Order
made
evidence
on points
decided.

The order is not evidence for a collateral matter; it is only evidence on points necessarily incident to the point decided: *R. v. Knaptoft*, 2 B. & C. 883; *Duchess of Kingston's case* (De Grey, C. J.), 20 How. St. Tr. 261, 355, cited in *R. v. Wye*, 7 A. & E. 761, by Lord Denman, C. J. See *Barry v. Jackson*, 1 You. & C. 585, 595; and see *R. v. Hartington*, 4 E. & B. 901; 24 L. J. M. C. 98, 104, judgment by Coleridge, J.; *R. v. Droitwich*, 9 Q. B. 886; 16 L. J. M. C.

38; Lord Campbell's, C. J., remarks approving *R. v. Wye*, *supra*

The entry in the sessions book is evidence of confirming or quashing the order on appeal. *R. v. Yewdale*, 9 A. & E. 806; 1 P. & D. 60.

Since, however, the large powers of amendment given to the Court under 11 & 12 Vict. c. 31, s. 4, and the extended power of the parties to abandon orders of removal before appeal under the same Stat. s. 8, and 12 & 13 Vict. c. 45, s. 6, cases brought before the sessions for the hearing, are tried more on the merits than upon any technical point of mere matter of form.

Parentage.

Settlement by parentage cannot, since 39 & 40 Vict. c. 61, s. 35, The Divided Parishes, &c. Act, be attained except in the case of a child under the age of sixteen, which child shall take the settlement of its father or of its widowed mother, as the case may be, up to that age; and shall retain the settlement so taken until it shall acquire another. But if it cannot be shown what settlement such child derived from the parent without inquiring into the derivative settlement of such parent, such child shall be deemed to be settled in the parish in which it was born.

The effect of this section seems to be, that the child will continue to be removable with and have the settlement of the father, or that of the widowed mother, up to the age of sixteen; and from and after that age, he will "retain" his father's then last settlement, although he may continue to live with his father, unless whilst being a member of the family he may acquire a settlement for himself in another parish or union. Should the father have acquired no settlement of his own, then the child will have his own independent settlement in the place of his birth: see *St. Andrew's, Worcester, v. Bodenham*, 22 L. J. M. C. 39, and the remarks in the judgments of Lord Campbell, C. J., and Coleridge, J. If child abandoned, or deserted, see pp. 461, 487, 495.

By the same section an illegitimate child will retain the settlement of the mother until it acquires another. Formerly the illegitimate child only had the mother's settlement until it attained sixteen, and then had the birth settlement. In this respect 4 & 5 Will. 4, c. 76, s. 71, is repealed, excepting so far as regards bastard children who may have passed the age of sixteen at the time the later

statute, 39 & 40 Vict. c. 61, s. 35, came into operation. *Tenterden Union v. St. Mary, Islington*, 47 L. J. M. C. 81; 38 L. T. 485; and see the cases there cited.

Marriage of mother of bastard child. An illegitimate child under sixteen does not take the mother's settlement which she may derive from her marriage. *Manchester v. St. Pancras*, 4 Q. B. D. 409; 41 L. T. 218; 27 W. R. 885.

Hollingborne v. West Ham: Lindley, J., clearly expressed the effect of this section (Matthews, J., concurring) in *Hollingborne v. West Ham*, 50 L. J. M. C. 74. The father, in that case, was born in Sutton Vallance, in which parish it was admitted his settlement was. He died in 1875, leaving four children, each under sixteen years of age, and his widow surviving. The question was, did the children take the settlement of the "widowed mother" which *she* would derive from her husband. The Court held they would, Lindley, J., saying: "This section, after the clause abolishing derivative settlements generally, is divisible into three parts. The *first* part, so far as it relates to children, applies to legitimate children under sixteen with a father or widowed mother. They are to take the settlement of the father or the widowed mother. The *second* part applies to illegitimate children only. The *third* part applies to 'any child in this section mentioned'; and in *The Manchester Overseers v. St. Pancras* (*sup.*), these words were held to include legitimate and illegitimate children. The present case falls within the *first* part of the section, the children being legitimate children and having the settlement of the widowed mother. I find nothing in the third part of the section taking away the settlement given to the child with the parent or a widowed mother."

Where parent's settlement derivative and has to be inquired into. As soon, however, as it appears that the husband's or father's settlement is a derivative one,—which has to be inquired into in order to ascertain it,—the children will be deemed to be settled in the place of their birth. *Woodstock v. St. Pancras*, 4 Q. B. D. 1; 48 L. J. M. C. 1; 39 L. J. 256; 27 W. R. 229; *co nom. R. v. St. Pancras*.

Second marriage gives no settlement to children of first marriage. No settlement is gained by the children arising from the second marriage of "the widowed mother." *Keynsham v. Bedminster*, 3 Q. B. D. 344; 47 L. J. M. C. 73; 38 L. T. 507; 26 W. R. 591; see the cases, *Comer v. Miller*, 6 Mod. 87; 2 Salk. 528; *St. Giles v. St. Clement's*, Cald. Ca. 10; *Wangford v. Brandon*, Carth. 449; *R. v. St. Giles-in-the-Fields*, Burr. S. C. 2; *R. v. Walthamstow*, 6 A. & E. 301; *R. v. St. Mary, Newington*, 4 Q. B. 583 (Patteson, J.).

How lost. The settlement of the child by parentage may be entirely

lost and a new and independent one acquired by the child by child's itself, although of tender years, in consequence of the independent resi- abandonment by the mother or parent, and by a residence dence of the child out of the control of the parent, and under such under sec. circumstances, that a settlement has been gained by a resi- 34 of 39 & dence of the child so as to satisfy the requirements of 40 Vict. c. 61. sec. 34 of 39 & 40 Vict. c. 61; see *R. v. Leeds*, 48 L. J. M. C. 129; 4 Q. B. D. 323, and *infra*, "Settlement by Residence."

By Relief.

Where a parish affords relief to a poor person residing out of the parish, the presumption of law is that such parish would not extend the relief unless under an obligation. *R. v. Wakefield*, 5 East, 335; *R. v. Barnsley*, 1 M. & S. 377; *R. v. Maidstone*, 12 East, 550.

But such relief may be explained away, as that it was given in mistake. *R. v. Bedingham*, 8 Jur. 378; *R. v. East Winch*, 12 A. & E. 697; *R. v. Acton*, 8 Q. B. 108.

The effect of the relief as an acknowledgment of the pauper's settlement is a question for the sessions, whose decision the Court of Queen's Bench will not disturb. *R. v. Edwinstowe*, 8 B. & C. 671; *R. v. Yarnwell*, 9 B. & C. 894; 4 M. & R. 685; *R. v. Great Salkeld*, 6 M. & S. 408.

By Renting a Tenement.

The statutes which have had reference to a settlement by Statutes. renting a tenement are, 13 & 14 Car. 2, c. 12, s. 1, which remained in force until July 2, 1819, when the 59 Geo. 3, c. 50, was passed. That statute continued until 22nd June, 1825, when 6 Geo. 4, c. 57, was passed, and subsequently in 1834 the 4 & 5 Will. 4, c. 76, s. 66, was added to the statutes.

The material alterations which have taken place in the nature of the qualification for acquiring a settlement by renting a tenement under the above statutes, the following *résumé* of their provisions will explain :—

In the reign of Charles II. it was considered that a 13 & 14 person "coming to settle on any tenement over the value of Car. 2, £10, and who could *bonâ fide* contract to pay at the rate of c. 12. £10 a year as rent for the occupation of a tenement, and should reside for forty days in the same parish where it lay, was a fit person to have his settlement there, and be irremov-

able, and to such extent was the enactment of 13 & 14 Car. 2, c. 12, s. 1, creating the settlement.

59 Geo. 3,
c. 50.

Under 59 Geo. 3, c. 50, an additional provision was made that no person could acquire the settlement unless such tenement consisted of a house or building within such parish or township, being *a separate and distinct* dwelling-house or building, or of land within such parish or township, or of both *bonâ fide* hired by such person at or for the sum of £10 a year at least, *for the term of one whole year*; nor unless such house or building be held, and such land occupied, and the rent for the same actually paid, for the term of one whole year at the least by the person hiring the same; nor unless the whole of such land be situate within the same parish or township as the house wherein the person hiring the said land dwelt and inhabited.

Under 6 Geo. 4, c. 57, s. 1, a proviso to the above was added that it was not necessary to prove the actual value of the tenement.

Actual
occupation
and rent
to amount
of £10
paid
under 1 W.
4, c. 18.

The 1 Will. 4, c. 18, s. 1, after reciting the provisions of the 6 Geo. 4, c. 57, and that doubts had arisen concerning the occupation of the tenements by the person hiring the same, and the amount of rent to be paid, and the person paying the same, to remove such doubts, it enacted, that no person thereafter (30th March, 1831) should acquire the settlement by reason of such yearly hiring of a dwelling-house or building, or of land, or of both, as in the said Act is expressed, unless such house or building or land shall be *actually occupied* under such yearly hiring in the same parish or township by the person hiring the same for the term of one whole year at the least, and unless the rent for the same, *to the amount of* £10 at the least, be paid by the person hiring the same; and by sec. 2, where the yearly rent exceeded £10, payment to the amount of £10 will suffice.

And as-
sessed to
poor-rate
4 & 5 Will.
4, c. 76.

Under 4 & 5 Will. 4, c. 76, s. 66, a further requirement was added—that no settlement should be acquired or completed by occupying a tenement “unless the person occupying the same shall have been *assessed to the poor-rate*, and have paid the same in respect of such tenement for one year.”

Limit of
residence
after
removal.

And by sec. 68, no person can retain a settlement gained by possession of any estate or interest in any parish longer than he inhabits within ten miles thereof.

Definition
of “tene-
ment.”

“*Tenement*” has in its general application a more comprehensive meaning than “land,” and may be “real” or “incorporeal.” In Co. Litt. 19 b., 20, c. 2, it is said, “the word *tenement* in-

cludes not only all inheritances which are or may be holden, but all inheritances issuing out of any of those inheritances, or concerning or annexed to, or exercisable within the same, though they lie not in tenure; therefore these may, without question, be entailed as rents, estovers, commons, or other profits whatsoever, granted out of land; or uses, offices, dignities, which concern lands or certain places, &c., because all these savour of the realty." See *Webb's case*, 8 Rep.; and see *R. v. Piddletrenthide*, 3 T. R. 772, where Lord Kenyon held that an incorporeal tenement conferred a settlement. See also *R. v. Chipping Norton*, 5 East, 239; and Burr. S. C. 318; *R. v. Hollington*, 3 East, 113; *R. v. Whixley*, 1 T. R. 137; Steph. Com.

Under this definition of "tenement" and its application to the Statute of Charles II., many complex decisions took place; and there were many cases discussed as to what constituted a sufficient holding of a tenement which would give the settlement, and of which the following are instances. It was held that the renting of a cony warren with "the permanency of the profits of the land by the mouths of the rabbits," gave the settlement: *R. v. Piddletrenthide*, 3 T. R. 772; *R. v. Londonthorpe*, 6 T. R. 378; *R. v. Stoke*, 2 T. R. 451; see *R. v. Minchin-Hampton*, 2 Sess. Ca. 320; Burr. S. C. 316; 2 Stra. 874. So the renting a dairy of cows fed on the growing produce and pasture of the land: *R. v. Tolpuddle*, 4 T. R. 671, overruling *R. v. Lockerly*, Burr. S. C. 315; *R. v. Comberworth, Half*, 13 L. J. M. C. 49; see also *R. v. Whixley*, 1 T. R. 137; the renting a fishery: *R. v. Old Alresford*, 1 T. R. 358; a mill when attached to the land or driven by water: *Evelyn v. Rintcombe*, 2 Salk. 536; the right to take soil from the river: *R. v. All Saints, Derby*, 5 M. & S. 90; or rushes from a pond: *R. v. All Saints, Cambridge*, 1 B. & C. 23; the agistment of cows, if specific: *R. v. Sutton St. Edmunds*, 2 D. & R. 800; *R. v. Hollington*, 3 East, 713; the renting tolls of a bridge (not being a turnpike-road bridge, 13 Geo. 3, c. 84, s. 56): *R. v. Bubwith*, 1 M. & S. 515; or a stallage for a butcher's stall in a market: *R. v. Caversham*, 4 B. & C. 683; the occupation must be as a tenant: *R. v. Cheshunt*, 1 B. & A. 473, and not ancillary to services rendered: see *R. v. Kelstern*, 5 N. & S. 136; *R. v. Bishopton*, 9 A. & E. 824; *R. v. Seacroft*, 2 M. & S. 473; see also *R. v. Iken*, 2 A. & E. 147. Where, however, a bailiff had as part of his wages the pasturage for two cows, the feed of the cows being worth £10, but in no way necessary for the performance of the service, or connected with it, a settle-

Former
settle-
ments.

ment was conferred: *R. v. Minster*, 3 M. & S. 276; *R. v. Melkridge*, 6 T. R. 598.

To avoid further discussion on these perplexing points, causing great litigation, 59 Geo. 3, c. 50, was passed. And whether by that statute, or under 6 Geo. 4, c. 57, and 1 Will. 4, c. 18, the "*tenement*," the hiring and occupation of which is *now* to give the settlement, must solely consist of a separate and distinct dwelling-house or building, or of land, or of both, and in one parish; within such limit the "*tenement*" is confined: see *R. v. Wootton*, 1 A. & E. 232; 3 N. & M. 312.

An alien
may
acquire
the settle-
ment.

A foreigner, or an alien, may gain a settlement by renting a tenement: *R. v. Eastbourne*, 4 East, 103; 1 Taun. R. 1. So may a soldier when on duty: *R. v. Brightelmstone*, 1 B. & Ald. 270.

Coming to
settle.

The "coming to settle" means, the holding and renting a tenement in the character of a tenant within the parish: Lord Ellenborough, C. J., *R. v. Bowness*, 4 M. & S. 210; see *R. v. Chediston*, 4 B. & C. 230.

The con-
tract for
the hiring
for the
year.

The contract for the hire of the tenement for the year must be *bonâ fide*: 59 Geo. 3, c. 50; 6 Geo. 4, c. 57; and 1 Will. 4, c. 18. The contract may be express or implied by a general letting: Redman & Lyon, Land. and Tenant, 4.

Where the contract is express and in writing, the contract will, of course, prove beyond dispute the terms of the hiring. Strictly, the contract should be produced, or its non-production satisfactorily accounted for: see *R. v. Merthyr Tydfil*, 1 B. & Ad. 29. But where rent has been paid, proof of the payment may be made without producing the contract of hiring; and the fact of the tenancy may be so proved, without the necessity of proving the terms of the contract. *R. v. The Holy Trinity, Kingston-upon-Hull*, 7 B. & C. 611; 1 M. & R. 444.

The questions arising under the above case, *R. v. Kingston-upon-Hull*, were on facts prior to 59 Geo. 3, c. 50, and 6 Geo. 4, c. 57, where the proofs necessary to establish the settlement were that a tenancy subsisted, and that the value of the tenement was £10 by the year. The terms of the agreement were immaterial. But under 59 Geo. 3, c. 50, and 6 Geo. 4, c. 57, the terms of the tenancy are material for showing the rent contracted for, and which cannot be proved without the production of the document: see Bayley's, J., remarks in *R. v. Kingston-upon-Hull*, in *R. v. Merthyr Tydfil*, 1 B. & Ad. 29; see also *Fenn d. Thomas v. Griffiths*, 6 Bing. 534; *R. v. Padstow*, 2 A. & E. 213.

The presumption, however, of the tenancy arising from the occupation, the proof of which makes out a *prima facie* case of a tenancy, cannot be negatived without the production of the written agreement when shown to exist; and it lies on the opposing party to produce it. See *R. v. Rawden*, 8 B. & C. 708; 3 M. & R. 426.

The statutes do not require that there should be any other hiring or renting than would in ordinary cases constitute a tenancy for a year: *R. v. Hurstmonceaux*, 7 B. & C. 551; 6 L. J. M. C. 35; *R. v. St. Giles', Cripplegate*, 33 L. J. M. C. 3. So where a house was hired quarterly at a yearly rent of £25, to be paid quarterly, determinable on a quarter's notice to be given by either party, it was held that this constituted a renting of a tenement "at a yearly rent," and sufficiently contemplated a tenancy to continue for a year, that the Court, on the authority of *R. v. Hurstmonceaux* (decided by Bayley, Holroyd, and Littledale, JJ.), held this was such a *bonâ fide* tenancy for the year as to create the settlement: *R. v. St. James', Clerkenwell*, 35 L. J. M. C. 65; see also *R. v. Willesden*, 3 B. & S. 593; 32 L. J. M. C. 109.

So also a demise for a half year, and so on from half year to half year, would be a demise for one year at least: *R. v. Charlton*, 1 Q. B. 245; 4 P. & D. 525; and see *Hastings v. St. James', Clerkenwell*, 35 L. J. M. C. 65. *Sed vide R. v. Norwich Corporation*, 30 L. T. 704.

Primâ facie, a general hiring will be presumed to be a yearly hiring: *Doe v. Browne*, 8 East, 165; *Doe v. Watts*, 7 T. R. 83. And the presumption is stronger where the hiring is of land, which varies in its value at different periods of the year: *R. v. Wainfleet, All Saints*, 8 B. & C. 227; 2 M. & R. 223.

The letting of property without any stipulation as to the duration of the tenancy is a letting at will; but as soon as the landlord accepts a yearly rent, or rent measured by any aliquot part of a year, a letting from year to year arises, unless some agreement to the contrary is made between the parties: *Doe v. Wood*, 14 M. & W. 682, 687; *Richardson v. Lamridge*, 4 Taunt. 128; *Hunt v. Allgood*, 10 C. B. N. S. 253.

Under 59 Geo. 3, c. 50, the whole of the rent contracted for must have been paid—"the rent for the same actually paid for the term of one whole year"—so that with a rental of £100, and only £99 paid, the settlement would not have been conferred. See *R. v. Ramsgate*, 6 B. & C. 713; *R. v. Ashley Hay*, 8 B. & C. 27; *R. v. Kibworth Harcourt*, 7 B. & C.

Presumption of tenancy from occupation.

Effect of acceptance of rent by landlord.

Payment of rent to amount of £10.

790. But this position was rectified by 1 Will. 4, c. 18, s. 1, stipulating "that the rent, *to the amount of £10 at the least*" should be paid; and payment to that amount is now sufficient to gain the settlement under 6 Geo. 4, c. 57: *R. v. Brighthelmstone or Brighton*, 1 Q. B. 674; 10 L. J. M. C. 93.

Rent paid after an order of removal executed will confer the settlement: *R. v. Willoughby*, 4 A. & E. 152; the removal will not put an end to the contract: *R. v. Filloughby*, 2 T. R. 709.

The renting must be *bonâ fide*: fraud avoids the settlement.

Rent paid by officers of a parish for the pauper with the fraudulent purpose of his gaining a settlement, will avoid the settlement: *R. v. St. Sepulchre, Cambridge*, 1 B. & Ad. 934; see, however, *R. v. Kibworth Harcourt*, 7 B. & C. 790, where, neither the landlord nor the tenant being parties to the fraud, the settlement was held good.

Where the contract for the renting is merely colourable, the settlement is defeated: *R. v. Woodland*, 1 T. R. 261. But the sessions must expressly find the fact that fraud exists: the Court of Queen's Bench will not presume fraud, however pregnant it may be: *R. v. Filloughby*, 2 T. R. 709; *R. v. Llanbedergoch*, 7 T. R. 105.

Where the stewards of the Wesleyan congregations "going circuit" as "circuit stewards," take houses as residences for the officiating ministers, the rent and rates of which are paid by the "steward;" and if paid by the officiating minister, the steward repays him;—the ministers who are appointed for the circuit, gain no settlement: *R. v. Tiverton*, 30 L. J. M. C. 79.

But if the *bonâ fide* renting be made by the party, although a third person be surety to the landlord for the rent, the settlement is acquired: *R. v. Keyworth*, 2 M. & R. 29; 1 M. & R. (M. C.) 281.

Apportionment of the rent.

Where the land rented under one holding lies in two parishes, it may be shown by evidence that the land lying in one of these parishes confers a settlement as being of the value by the year of £10, and which proportion of the rent was paid by the tenant when paying his entire rent. Notwithstanding the proviso in 6 Geo. 4, c. 57, that "value" need not be proved, if a party who rented land in two parishes for which he might pay an annual rent of £300 or £400, and one acre be in one parish, the residue in another, if evidence of the division of value were not admissible, the tenant would gain a settlement in neither parish. *R. v. Pickering*, 2 B. & Ad. 267; *R. v. Hockworthy*, 7 A. & E. 493.

The occupation of the tenement under 6 Geo. 4, c. 57, was a simple technical occupation, so that the occupation by a third person was sufficient. 59 Geo. 3, c. 50, had required that the occupation should be "by the person hiring" the tenement, but those words are not in 6 Geo. 4, c. 57. In *R. v. Great Bentley*, 10 B. & C. 520, the Court considered that those words were left out by design, and therefore it was held under that statute that a person who occupied the premises but *underlet* a portion still satisfied the statute and gained the settlement; see also *R. v. Ditchet (a)*, 9 B. & C. 176. The occupation.

But now, under 1 Will. 4, c. 18, there must be an *actual* occupation, under the hiring, by the person hiring the same, for the term of one whole year at the least.

Under this statute the *whole* subject-matter of the renting must be occupied; the occupation of part, which may be equal to a rental of £10, will not suffice: *R. v. Berkswell*, 6 A. & E. 282; 1 N. & P. 423. The tenant must be unconnected with any other person, and a separate occupier: *per* Lord Denman, C. J., *R. v. Caverswall*, 1 P. & D. 427; also, *per* Patteson, J., in *R. v. Wootton Bassett*, 1 A. & E. 232; 3 N. & M. 312. Actual occupation.

It must be an occupation *in fact* of the *whole* dwelling-house and not a constructive one, and no part of the premises can be underlet to retain the settlement. *R. v. St. Nicholas', Rochester*, 5 B. & Ad. 219; 3 N. & M. 21, in which case Patteson, J., said: "the words 'actually occupied' put an end to all question, and the case must be considered as if the word 'actually' were incorporated in 6 Geo. 4, c. 57, which is not repealed by 1 Will. 4, c. 18. Then, reading the 6 Geo. 4, c. 57, as if *that* word, as well as the words 'by the party hiring the same,' were incorporated in it, it will prevent any one from acquiring a settlement by renting a tenement unless such house or building (that is, the separate and distinct dwelling-house, or building, or land, or both, of which the tenement is required to consist) shall be *actually* occupied under the yearly hiring, by the party hiring the same, for the term of one whole year;" see also *R. v. Macclesfield*, 2 B. & Ad. 870; *R. v. St. Nicholas, Colchester*, 2 A. & E. 599.

So also where a tenant assigns the growing crops before the expiration of his year, retaining only possession of the house, he has no settlement: *R. v. Pakefield*, 4 A. & E.

(a) See Lord Denman's remarks on this case in *R. v. St. Mary Kalendar*, 9 A. & E. 626; 1 P. & D. 497.

612; 6 N. & M. 16, supported and acted on in *R. v. Melsonby*, 12 A. & E. 687.

Where the under-letting is limited.

But there may be a limited letting under which the pauper had not held, at all times, the entire use of all parts of his house; as where he had, at intervals, let out bedrooms to lodgers for the night or week. In this instance the lodgers had not any right to the rooms during the day, but to which the pauper and his family had constant access and had control over during the day, and of which the pauper retained the keys. The case was likened to that of an innkeeper; and under the circumstances the pauper retained his settlement. "The case," said Littledale, J., "was clearly distinguishable from *R. v. St. Nicholas, Rochester*, where the tenant let a part of the house, and it was actually occupied by another person:" *R. v. St. Giles-in-the-Fields*, 4 A. & E. 495; 6 N. & M. 5; see also *R. v. St. Mary Kalendar*, 9 A. & E. 626; 1 P. & D. 477.

The yearly hiring must be completed.

The occupation for the year must be completed by the party who hires the house; thus, where the husband, who had hired the house, died a few days before the termination of the year, his widow and family derived no benefit by continuing the occupation, and gained no settlement: *R. v. Crayford*, 6 B. & C. 68.

By Residence.

Previous course of legislation.

The course of legislation has been of recent years to simplify the law of settlement, and to rid it of those complex questions which had arisen in tracing the settlement and immovability of a pauper, his family, and descendants, through abstruse investigations of a remote derivative settlement of the pauper's father; or perhaps of some one of his remote ancestors.

To detail the earlier history of the poor laws in reference to settlements, however interesting a subject, would be beyond the object of this treatise; but reference may be made to the fact that by 19 Hen. 7, c. 12, the settlement might have been by residence at the place where the pauper "had made his last abode for three years;" as explained by 1 Ed. 6, c. 3; or "where he had been most conversant for three years;" and this period was, by 1 Jac. 1, c. 7, "to be where he last dwelt by the space of *one year*" (a). See

(a) It is of interest to note how modern legislation in this, as well as in other legal matters,

tends to revert back to that of early history.

further on this matter, 4 Burn's Justice of the Peace, "Poor," Vol. I., 316.

As to the irremovability of a pauper by reason of residence, reference is made to that subject discussed under the title, "Removal of the Poor," *supra*, p. 454, where the authorities are collected. Such irremovability of the pauper is made the foundation of the settlement by residence under 39 & 40 Vict. c. 61, s. 34: "Where any person shall have resided for the term of three years in any parish in such manner, and under such circumstances in each of such years, as would, in accordance with the several statutes in that behalf, render him irremovable, he shall be deemed to be settled therein until he shall acquire a settlement in some other parish by a like residence or otherwise; provided that an order of removal, in respect of a settlement acquired under this section, shall not be made upon the evidence of the person to be removed, without such corroboration as the justices or Court think sufficient."

This section has no retrospective effect. Where such a status of irremovability as above required by the Act had, before the Act, been acquired, *but had been lost before it came into operation*, no settlement was gained: *R. v. Ipswich Union*, 2 Q. B. D. 269; 46 L. J. M. C. 207; 36 L. T. 317; 25 W. R. 511.

But where the residence had been continuous, during each of the three years, partly before and partly since the Act, the pauper acquired the status of irremovability and the settlement was gained. *R. v. Carlisle Union*, 47 L. J. M. C. 114; 3 Q. B. D. 479.

Before this Act, a child under seven years was always removable with the mother for the natural care and nurture of the child. But, under this section, even such an infant may gain the status of irremovability, and thereby acquire the settlement under the statute. So where the child of a single woman was born in the parish R., and when it was about a fortnight old it was placed by the mother under the care of a man and his wife with whom it lived away from its mother for six years in parish S. without receiving any relief. There was nothing to show that the mother, who had never been again near the child, intended to resume her maternal rights, and in this respect, the Court remarked, the circumstances were different from a parent sending a child to school, as in *R. v. The Abingdon Union*, 39 L. J. M. C. 153; L. R. 5 Q. B. 406, in which case the child would still be subject to the control of the

The irremovability by residence.

39 & 40 Vict. c. 61 not retrospective where settlement lost before the Act.

Continuous residence before and after the Act.

Children under seven years may acquire settlement.

R. v. Leeds Union.

parent, making the child's constructive residence the parental home. But where the child has been wholly given up, and there has been a virtual abandonment of it, and apparently no intention to resume the parental rights, the only alternative was that the child resided where it was placed. *R. v. Leeds Union*, 4 Q. B. D. 323 ; 48 L. J. M. C. 129 (a).

The following part of the 35th sec. 39 & 40 Vict. c. 61, may be noticed in regard to the preceding case : "An illegitimate child shall retain the settlement of the mother *until* such child *acquires another* settlement." In *R. v. Leeds* "*another settlement*" was acquired. See *R. v. St. Mary, Newington*, 4 Q. B. 581 ; 12 L. J. M. C. 68.

Lunatic
wife
takes
settlement
of husband
on his
residence.

A female criminal lunatic who had been acquitted on the ground of insanity will have the settlement of her husband at the time of the making the order, and not at the time of her detention ; so where the woman was placed in detention at Broadmoor in 1867, and the order adjudging her settlement was not made until 1877. In 1877, the husband had acquired a settlement by residence in Westbury, and was there settled at the time of the order respecting his wife's settlement, she being then in detention at Broadmoor, and it was held her settlement by residence was rightly adjudged to be that of her husband's. Manisty, J., pointedly put the case : "Why is a parish which would not be chargeable with the maintenance of the person if she were sane, to be charged with it because she is insane by no fault of hers ?" *Barton Regis Union v. Berks. Clerk of the Peace*, 4 Q. B. D. 37 ; 48 L. J. M. C. 51 ; 39 L. T. 445 ; 27 W. R. 362.

A married woman living apart from her husband may gain an independent settlement of her own by residence. *R. v. Maidstone*, 5 Q. B. D. 31 ; 49 L. J. M. C. 25 ; see 24 & 25 Vict. c. 55, s. 3 ; 29 & 30 Vict. c. 113, s. 17 ; 39 & 40 Vict. c. 41, s. 34. See *ante*, p. 462.

By Payment of Rates.

3 Will. &
M. c. 11,
s. 6.

By 3 Will. & M. c. 11, s. 6, any person coming to inhabit in any town or parish, and charged with the payment and paying his share towards the public taxes or levies of the

(a) See remarks of Cockburn, C. J., on the proviso in sec. 1 of 11 & 12 Vict. c. 111 (passed to remove doubts in 9 & 10 Vict. c. 66, s. 1), and which, his Lordship said, only referred to cases where

a family was all together. It was to prevent a united family from being separated: *R. v. Leeds (supra)*, in reference to *R. v. St. Ebbes*, 12 Q. B. 137 ; 18 L. J. M. C. 14.

town or parish, was adjudged to have a legal settlement there.

Under this statute a person rated and paying taxes, whatever might be their value, acquired a settlement. The parish was considered to have adopted, in such a case, the person as one of the parishioners: *per* Bayley, J., in *R. v. St. Pancras*, 2 B. & C. 122; 3 D. & R. 343.

35 Geo. 3, c. 101, s. 4 (1795) required the tenement rated to be of the yearly *value* of £10 (*a*).

By 6 Geo. 4, c. 57, s. 2 (1825) the like restrictions were put on settlements by payments of rates as by renting a

Payment of rates to be with payment of rent.

(*a*) The sole object of the legislature in passing 35 Geo. 3, c. 101, was to take away the power of removing poor persons likely to become chargeable, and to make them irremovable until actually chargeable. But in doing this it became necessary to guard against certain evils which this change would produce to parishes. For instance, by the old law, a person coming into the parish, and giving a written notice to the overseers, would, if he resided forty days, gain a settlement; the reason of this being, that if likely to be chargeable, the overseers, availing themselves of the knowledge thereby communicated, might remove him. But when the law was altered, and "*actual*" substituted for "*probable*," chargeability, it would follow that a person very likely to become chargeable might, if he was desirous of doing so, come in and give notice, and in defiance of the overseers acquire a settlement by only not demanding relief for forty days. In order to remedy this evil, settlement by notice was abolished by section 3. So again, if a person came to settle on a tenement under £10, he would by the old law be removable if likely to become chargeable; but if he was rated and paid rates in respect of it for forty days, and was not during that time actually chargeable, he might become

settled in the parish, and demand relief on the forty-first day. For this reason, such persons rated in respect of tenements under £10 were prevented by section 4 from gaining settlements by paying rates. Similar reasons may be given for the two remaining enactments in the 5th and 6th sections. *The whole may thus be summed up:* Wherever the change of the law from probable to actual chargeability enabled persons who were likely to become chargeable to obtain settlements by preventing the parish officers from removing them for forty days, those settlements *were abolished*; but where by the law, as it stood before 35 Geo. 3, c. 101, such persons were irremovable, that Act did not interfere with their cases: Holroyd, J., in *R. v. Idle*, 2 B. & A. 149. Applying this principle to the case here decided, we may conclude that the 35 Geo. 3, c. 101, did *not* prevent settlements by paying rates in respect of tenements *above* £10; for to such cases the inconvenience above pointed out did not apply. By 13 & 14 Car. 2, c. 12, persons coming to settle on tenements above £10, and consequently persons paying rates in respect of such tenements, were irremovable, even though likely to become chargeable. Their situation therefore was not altered by 35 Geo. 3, c. 101; see *R. v. St. Pancras*, 2 B. & C. 128, note.

tenement; enacting that no person should acquire a settlement by payment of parochial rates (*a*) for any tenement not being his or her own property, unless such tenement consisted of a separate and distinct dwelling-house or building, or of land or of both, *bonâ fide* rented by such person in such parish or township at and for the sum of £10 a year at the least, for the term of one whole year; nor unless such house or building or land be occupied under such yearly hiring, and the rent for the same to the amount of £10, actually paid for the term of one whole year at least; and it shall not be necessary to prove the value as was the case under 35 Geo. 3, c. 101, s. 4.

Actual occupation.

The 1st sec. of 1 Will. 4, c. 18, although reciting fully the 6 Geo. 4, c. 57, s. 2, the enacting portion requiring that, in the case of a settlement by the renting of a tenement, the house, &c., shall be "actually occupied" under the hiring, it is not made to apply to the settlement by payment of rates.

Rent paid to amount of £10.

Sec. 2 applies to the payment of rates, as well as to the renting a tenement, and under which all doubts as to the amount of payment of the rent are set at rest by the enactment that, in cases where the rent *exceeds* £10 by the year, "payment to the amount of £10 shall be deemed sufficient."

4 & 5 Will. 4, c. 76, s. 66, made a further requirement to obtain the status of settlement on renting a tenement, but which does not apply to payment of rates, the being assessed to the poor-rate, and paying the same for one year. "There is a time when a point even in sessions law ought to be considered as settled," said Parke, J., in *R. v. Penryn*, 2 B. & Ad. 224. And although Lord Denman said in *R. v. Stoke Damarel*, 6 A. & E. 308, that he believed the legislature intended to get rid of the settlement by rating by the Acts of Parliament, and so said Lord Ellenborough in *R. v. Penryn*, referring to the same opinion expressed by Lord Kenyon, that head of "Settlement" reappeared; and when 6 Geo. 4, c. 57, passed, it could not be doubted that a person might gain a settlement by the payment of rates. The effect of that statute was to prevent the occupier of a tenement gaining a settlement by such means unless the tenement were of a certain description. "But," said Lord Denman,

(*a*) 9 Geo. 1, c. 7, s. 6, 161, s. 59, the assessed taxes, exempted scavengers, and the from the payment of taxes which highway rates, and 43 Geo. 3, c. could confer a settlement.

"believing, as I certainly do, that the legislature intended to get rid of the settlement altogether by payment of rates, still I cannot see they have taken effectual means for doing so. The settlement by the payment of rates, supposing the tenement to be such as described by 6 Geo. 4, c. 57, continues, notwithstanding the 1 Will. 4, c. 18."

The requirements to gain this settlement are :—

1st. The tenement must consist of a separate and distinct dwelling-house, or building, or land, or of both.

2nd. It must be *bonâ fide* rented at the sum of £10 a year at the least for one whole year.

3rd. The house, &c., must be occupied under such yearly hiring.

4th. The rent to the amount of £10 actually paid for the term of one whole year at least, although the rent exceeds £10.

"The tenement must be separate and distinct," that is, "unconnected with any other person and a separate occupier;" Lord Denman, *R. v. Caverswall*, 1 P. & D. 436, and Paterson, J., in *R. v. Wootton*, 1 A. & E. 232; *R. v. Ushworth*, 5 A. & E. 261.

An "actual" occupation is *not* required as provided under 1 Will. 4, c. 18, in respect of renting a tenement; an under-letting will not vitiate the settlement: *R. v. Stoke Damerel*, 6 A. & E. 308; 1 N. & P. 453; *R. v. Brighton*, 1 Q. B. 674; 1 G. & D. 54. The occupation is to be for the year; but such occupation may be a "constructive" one, as by keeping the key of the house or otherwise. See *R. v. St. Mary Kalendar*, 9 A. & E. 626; 1 P. & D. 497; a forty days' residence is not sufficient (a); *R. v. Westbury-on-Trym*, 7 E. & B. 444; 26 L. J. M. C. 76: and see as to the occupation under the older Stat. 59 Geo. 3, c. 50; *R. v. St. Pancras*, 2 B. & C. 122; 3 D. & R. 343.

Should the rent of the house be *bonâ fide* £10 or more, a payment to the amount of £10 in one year will suffice. Rent paid to £10.

Where the rent was £80, and three quarters had been paid and then the house was underlet, and the pauper paid no more rent, but was duly assessed in respect of the whole of the premises to the poor-rate, and he paid all the rates, this was sufficient: *R. v. Brighton* (*supra*).

The foundation of the settlement by payment of parochial Payment of

(a) Before 6 Geo. 4, c. 57, the forty days' residence was sufficient: *R. v. Kingstead*, 7 B. & C. 607.

one rate
sufficient.

rates is, that it is in effect a notice to the parish officers of an inhabitancy. See remarks *per* Bayley, J., *R. v. Christ Church, London*, 8 B. & C. 660; S. C. *eo nom.* *R. v. St. Anne's, Blackfriars*, 3 Man. & R. 383, where it was held that a watch-rate in one of the city wards, collected by the beadle of the ward, did not confer the settlement: but it was held that a land tax was within 3 Will. & M. c. 11, s. 6, that tax having been collected by the parish officers. See also as to a watch-rate where it was collected by the parish officers, *R. v. Everton*, 29 L. J. 165; and in which Cockburn, C. J., said that if a man is assessed to *two* rates entirely distinct, and pays one of them and not the other, he gains his settlement under the Statute of Will. & Mary. The payment of any one district rate or tax, which, if standing alone, would confer a settlement, is sufficient.

Improvement and lighting rates were charged on every occupier of a city under a public local Act. The assessors who collected the rates were appointed for each parish separately by commissioners, the majority of whom were elected by the parishes, but the assessors were not necessarily parochial officers. This was held to be a public tax of the parish, the assessment to and payment of which gave a settlement; and see Blackburn's, J., remarks on *R. v. Everton*, *R. v. Christ Church*, and Lord Hardwicke's observations in *Bramley v. Moore*, 5 Burr. 76; *R. v. St. Thomas's, Devon*, 59 L. J. M. C. 83; S. C. *Exeter Union v. St. Thomas's*, 22 L. T. 379; S. C. *R. v. Exeter Union, St. Sidwell*, 18 W. R. 997; as to payment of property tax, see *St. George's, Hanover Square, v. Cambridge*, 37 L. J. M. C. 17.

Being
"charged"
to the rate.

There is no distinction between the word "charged" in 3 Will. & M. c. 11, s. 6, and the word "assessed" in 4 & 5 Will. 4, c. 76, s. 66; and although this latter statute applies only to settlements by renting a tenement, still the decision in *R. v. Hulme*, 4 Q. B. 538; 12 L. J. M. C. 100, affects the construction to be put on 3 Will. & M., and 6 Geo. 4, c. 57, s. 2. When, therefore, the pauper had been "charged," although not "assessed,"—that is, not having his name on the rate-book—that will be a compliance with the terms of the statutes if the rate be paid: see *ante*, p. 488, "Settlement by Renting a Tenement." But where the landlord paid the rates, under special agreement to pay all rates, the tenant paying a higher rent in consequence, and the landlord always paid the rates; although the pauper in this case was "assessed" as occupier, it was held he gained no settlement: *R. v. South Kilvington*, 13 L. J. M. C.

3; 5 Q. B. 216; 7 Jur. 1108; see *R. v. Weobly*, 3 East, 68; *R. v. Axmouth*, 8 East, 383; *R. v. Oakhampton*, Burr. S. C. 5.

Where rates had not been paid for some years by parties duly rated and a person paid the rates in a gross sum to prevent their disfranchisement—it was held in the Q. B. in *R. v. Bridgewater*, 10 A. & E. 66, that this payment was not good within the Municipal Reform Act. But in *Hughes v. Chatham*, 13 L. J. C. P. 44, the Court of C. P. held a payment by the Paymaster-General's clerk of a poor-rate to which the tenant was rated, and such payment was in part remuneration for his services, to be a payment of rates by the tenant within the Reform Act, sec. 27, as the tenant was himself *liable* for the rate. But, said Tindal, C. J., “Whether or not it would have been sufficient within 3 & 4 Will. & M. c. 11, s. 6, or under 4 & 5 Will. 4, c. 76, is another matter.”

What amounts to payment of the rate.

Where a rate is paid by a third party such payment to be of any avail must be paid on the authority (Crompton, J.) of the ratepayer assessed or “charged,” or the payment will confer no settlement: *R. v. Bengeworth*, 23 L. J. M. C. 124; 3 E. & B. 637, overruling *R. v. Bridgewater*, 3 T. R., unless so explained; see also *R. v. Bridgenorth*, 10 A. & E. 66.

Where both the landlord's name and that of the tenant are on the rate-book, until the contrary be shown, the tenant is the one intended to be rated: *R. v. Rainham*, 5 T. R. 240; *R. v. St. Lawrence*, 4 Doug. 190; *R. v. Mitcham*, *ib.* 226. This is for the sessions to determine: *R. v. Folkstone*, 3 T. R. 505; see also *R. v. Huthwaite*, 1 E. & B. 501; 21 L. J. M. C. 189, where the rates were paid by one of two joint occupiers, and the payment was held to be that of both. So also where the landlord was “assessed” to the poor-rate under a local Act, under which the parish officers were obliged to rate the landlord; but the tenant had claimed to be rated under the Reform Act, 2 Will. 4, c. 45, s. 30, and his name was inserted on the rate together with that of the landlord, and he paid the rate; this was held sufficient: *R. v. St. Giles-in-the-Fields*, 7 E. & B. 205; 26 L. J. M. C. 55.

Entry on rate book.

No alteration has been made in the law by the subsequent statutes to 13 & 14 Car. 2, c. 12, requiring a residence of forty days to complete the settlement, 9 B. & C. 176; 4 M. & R. 151.

What residence required.

The residence need not be on the premises if in the parish: *R. v. Wainfleet, All Saints*, 8 B. & C. 227; 2 M. & R. 223. But must be in the year of occupation: *R. v. Willoughby*, 4 A. & E. 143; 5 N. & M. 457; and in the parish

where the whole or such part of the tenement as is of the yearly value of £10 by the year; see "Apportionment of the Rent," on p. 492: *R. v. Pickering*, 2 B. & Ad. 267.

The 4 & 5 Will. 4, c. 76, s. 66, which applies only to the settlement by renting of tenement, leaves the settlement on payment of rates on the same footing as before; that is, as under 3 & 4 Will. & M. c. 11, s. 6.

Lands let
under
special
Acts.

Where land is hired under Acts for the relief of the poor, 59 Geo. 3, c. 50, as amended by 1 & 2 Will. 4, c. 42, and c. 59, as to crown lands, or let by parish officers to a poor inhabitant, no settlement will be gained by payment of rates: 1 & 2 Will. 4, c. 42, s. 5; and c. 59, s. 2.

Proof of
payment
of rates.

To prove payment the rate-book should be produced, or its non-production accounted for: *R. v. Cappull*, 2 East, 25; see *R. v. St. Mary, Warwick*, 1 E. & B. 816; 22 L. J. M. C. 109; where the entry of the receipt of the rate by the deceased partner of the collector, duly appointed, was admitted as evidence.

POST OFFICE.

The statute 7 Will. 4 & 1 Vict. c. 36, consolidates the laws relative to offences against the Post Office, and refers to c. 32 of the same sessions "An Act to repeal the several laws relating to the Post Office."

Sec. 2 of c. 36 inflicts a penalty of £5 on account of every letter conveyed by a person in contravention of the exclusive privilege of the Postmaster-General. And every person who may be in the practice of conveying such letters will, for each week during which such letters may be so conveyed, forfeit £100. Every person sending such letters in the like contravention will forfeit for every such letter £5; or should he be in the practice of sending such letters, then he will forfeit £100 for each week he may so send them. And similar penalties are to be inflicted on persons collecting such letters.

By sec. 3 every person, whether the master, or an officer, or one of the crew, or a passenger of an inward bound vessel, having in his possession any letters, not exempt from the privilege of the Postmaster-General, after the master shall have sent the ship's letters to the post office, will forfeit for every such letter £5; and whether in the baggage or on the

person of the offender, or otherwise in his custody, it will be considered as in his possession ; and every person detaining such letter after demand by an officer of Customs or Post Office authorised to demand ships' letters, will forfeit for every such letter £10.

By sec. 5 every person abusing the privilege of sending by post newspapers, by inclosing any letter or writing marks, &c., will forfeit treble the postage.

Sec. 6 imposes heavy penalties of £200 on masters of vessels refusing to take Post Office letter-bags when tendered ; or who shall open a sealed letter-bag ; or shall not duly deliver the letter-bag on the ship's arrival. And every person entrusted with a letter-bag to bring on shore, and breaking the seal, or who may in any manner wilfully open the same, will forfeit £20. The master neglecting to make his declaration of having delivered his ship's letters will forfeit £50 ; and should he break bulk or "make entry" before delivery of his letters, will forfeit £20.

Sec. 7 provides against the carelessness and misconduct of persons having charge of letter-bags, and makes the person liable to forfeit £20 if when employed to convey or deliver a post letter-bag or post letter he shall leave the same ; or permit a person, not being a guard or person employed for the purpose, to ride in the carriage used for the purpose of conveying such letter-bag or letter ; or shall be guilty of any act of drunkenness, carelessness, or other act of negligence or other misconduct, whereby the safety of the post-bag or letter shall be endangered ; or who shall collect or receive such letter otherwise than in the ordinary course of post ; or who shall give any false information of any assault or attempt at robbery upon him ; or who shall loiter on the road or wilfully mis-spend his time so as to retard or delay the progress or arrival of a post letter-bag or post letter ; or who shall not use due and proper care and diligence safely to convey the same according to Post Office regulations.

By sec. 11, persons aiding and abetting in any offence under the Act will be liable to the same forfeitures as the principals.

Sec. 13 provides that any justice having jurisdiction where the offence may be committed, may hear and determine any offence against the Post Office Acts which may subject the offender to a penalty not exceeding £20, with power to levy a distress, and commit the offender to gaol for any time not less than three or more than six calendar months if the full penalty amount to £20 ; or for a time not exceeding three

Jurisdic-
tion of
justice.

calendar months if the penalty shall not amount to £20 unless such penalty be sooner paid.

Appeal.

Any person aggrieved by a conviction or judgment of such justice may appeal against the same to the justices in general or quarter sessions for the county or place within which the offence was committed, which shall be held next after *ten* days on which such conviction shall have been made, of which appeal notice in writing shall be given to the prosecutor or informer *seven* clear days previous to the first day of such sessions, and such justices may finally hear and determine such appeal, and award costs. But no such person shall make his appeal unless within *five* days after the conviction he enter into his recognizance, with two sureties, to prosecute his appeal, and pay costs to be awarded. And such proceedings are not to be quashed from want of form (*a*): sec. 13.

Sec. 14 gives the justice of the peace power to mitigate the penalties; but all reasonable costs incurred in prosecuting the case are to be allowed in excess of the penalty imposed.

Sec. 16 provides for the appropriation of the penalties; and sec. 17 for the award of costs to the defendant.

Sec. 24 limits the proceedings for any penalties to within twelve months after the commission of the offence.

The terms "post bag" and post letter," &c., are defined by sec. 47.

Applica-
tion of
Sum. Juris.
Acts to
Post Office
Acts.

By sec. 53 of the Summary Jurisdiction Act, 1879, the Summary Jurisdiction Acts will apply to all informations, complaints, and other proceedings before a court of summary jurisdiction under the statutes relating to the Post Office. And every offence under the Post Office statutes for which a person is liable to forfeit the sum of £20 may be prosecuted before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

These provisions are inserted in consequence of Post Office cases being excluded from the operation of the 11 & 12 Vict. c. 43, by sec. 35 of that Act; but so much of that section is repealed by the 2nd schedule of the Summary Jurisdiction Act, 1879.

(*a*) As to how far this appeal section is affected by the Summary Jurisdiction Act, 1879, ss. 31.

32. and 55, sub-sec. (2); see *infra*, tit. "Sum. Juris. Acts."

PUBLIC HEALTH ACT, 1875.

38 & 39 Vict. c. 55.

Where any person deems himself aggrieved by any rate made under the Public Health Act, or by any order or conviction, judgment or determination of, or by any matter or thing done by, any court of summary jurisdiction, such person may appeal therefrom under the following regulations :—

The appeal against a rate order or conviction under the P. H. A. 1875.

1. The appellant must appeal to the next court of quarter sessions for the county, division, or place in which the cause of appeal arose, holden not less than twenty-one days next after the demand of the rate, or decision of the court appealed from.

2. He must within fourteen days after the cause of appeal (a) has arisen, give notice to the other party, and to the court of summary jurisdiction (b), by whose act he deems himself aggrieved, of his intention to appeal, and the grounds thereof.

3. And immediately after such notice enter into his recognizance with two sureties to try the appeal, abide the judgment of the court, and pay costs (c).

The sub-sections then further enact :—

4. That if the appellant be in custody on entering into his recognizance, he is to be released.

5. On the hearing of an appeal against a rate, the court will have powers as to amendment, or quashing the rate, or assessment, or awarding costs between the parties to the appeal in like manner as on the hearing of appeals in respect of poor-rates. And the court may order the amount of rate appealed on to be collected and carried to account on the next effective rate, and award costs.

6. In the case of other appeals the court may adjourn the appeal, and on the hearing confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to that court, or make any other order thereon, and award costs.

(a) The "cause of appeal" is the decision of the court : *R. v. Bar-net Rural Sanitary Authority*, 45 L. J. M. C. 105 ; 1 Q. B. D. 558 ; *R. v. St. Albans*, 35 L. T. 362 ; 41 J. P. 6.

re Curtis, S. C. 47 L. J. M. C. 35 ; 3 Q. B. D. 13 ; a. p. 72, 133.

(c) The appellant may elect to appeal under the Sum. Juris. Act, 1879 ; see ss. 32, 31, where it is against a conviction.

(b) See *Curtis v. Buss*, or *In*

7. The decision of the court will be binding on all parties. A special case for the opinion of the superior court may be stated; sec. 269.

The decision on the special case may be further appealed on to the House of Lords: *Walsall v. The London and North Western Railway Co.*, 48 L. J. M. C. 65; Judic. Act, 1873, ss. 19, 45.

When any person appeals against an order made under the Act, no liability to any penalty will arise, nor any proceedings be taken, or work be done under the order, until the appeal is determined, or has ceased: sec. 99.

The following may be classed as offences under the Act :—

Connecting drain with sewer. Any person connecting a drain with the sewer, without complying with sec. 21 of the Act as to the notice to the local authority of his intention to do so, will be liable to a penalty of £20: sec. 21.

Drainage to houses. No house is to be built or rebuilt within 100 feet of the public sewer without a drainage communication with the sewer under the penalty of £50; sec. 25.

Building over sewer without consent. A building newly erected over a sewer; or vault, arch, or cellar under a carriage-way of a street, without the written consent of the urban authority, may be pulled down; sec. 26.

Keeping nuisances on premises. It is an offence under the Act to allow a nuisance to be created on premises, as the keeping of swine; suffering waste or stagnant water to remain after notice to remove the same; or allowing the contents of a water-closet, privy or cesspool, to overflow or soak therefrom, under a penalty of 40s., and of 5s. a day so long as the same continues; sec. 47.

Removal of nuisances. The neglecting to remove periodically manure or other refuse matter from premises after notice renders the party liable to a penalty of 20s. a day during the time such manure, &c., is permitted to accumulate; sec. 50. See *Smith v. Waghorn*, 27 J. P. 744.

Injuring meters. A person wilfully, or by culpable negligence, injuring any meter or fittings belonging to the local authority; or who fraudulently alters the index of any meter, or prevents any meter from duly registering the quantity of water supplied, or fraudulently abstracts or uses water of the local authority, is liable to a penalty of 40s. The existence of artificial means, *under the control* of the consumer, for causing any such alteration, &c., will be evidence that the consumer *did* fraudulently affect the same; sec. 60. See *R. v. White*, 22 L. J. M. C. 123.

Occupying cellars. Any person who lets, occupies or knowingly suffers to be

occupied for hire or rent a cellar contrary to provisions of the Act (secs. 71 & 72), will be liable to the penalty of 20s. for every day during which the same is so occupied after notice in writing from the local authority; sec. 73. After two convictions within three months, the premises so occupied may be ordered to be closed; sec. 75. The passing the night in a cellar will be an "occupation"; sec. 74.

The keeper of a common lodging house (a),

1. Receiving a lodger where the house is unregistered;
2. Failing to make report (after schedules have been furnished him) of persons resorting to the house;
3. Failing to give notice when any inmate has been confined to bed with fever or infectious disease;

will be liable to a penalty of £5: and in case of a continuing offence to a further penalty of 40s. a day; sec. 86.

The conviction of a third offence will disqualify the person from keeping a common lodging house; sec. 88. A part of a house, or a room in a house, may be considered as "common lodging house"; sec. 89.

Under sec. 91, Nuisances are defined to be:—

1. Any premises in such a state as to be a nuisance *or* injurious to health. Nuisances defined.

It is to be noted that the "or" is to be read disjunctively and not as "and." The nuisance need not be actually injurious to health; but such a nuisance as may tend to an injury to health. See *Gaskell v. Bayley*, 28 J. P. 293, 322; 30 L. T. 516, Q. B.; *Draper v. Sperring*, 30 L. J. M. C. 225; *Great Western Railway v. Bishop*, 41 L. J. M. C. 120; L. R. 7 Q. B. 550; 26 L. T. 950; *Malton B. H. v. Malton Manure Co.*, 4 Ex. D. 302; 49 L. J. M. C. 90; 40 L. T. 755; 27 W. R. 802; *R. v. Phillips*, L. R. 1 Q. B. 648. [See also *Banbury v. Pope*, 8 Q. B. D. 97; 51 L. J. M. C. 21].

2. Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, ashpit, so foul or in such a state as to be a nuisance *or* injurious to health.
3. Any animal so kept as to be a nuisance *or* injurious to health.
4. Any accumulation or deposit which is a nuisance *or* injurious to health. See *Scarborough Mayor v. Scarborough Union*, 1 Ex. D. 344.
5. Any house or part of a house so overcrowded as to

(a) See sections 76—85. A non-resident landlord may be the keeper of a common lodging-house: *Halligan v. Ganly*, 19 L. T. 268.

be dangerous *or* injurious to the health of the inmates, whether or not members of the same family.

6. Any factory, workshop or workplace (a), not kept in a cleanly state, or not ventilated in such manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance *or* injurious to health; or so overcrowded while work is carried on as to be dangerous *or* injurious to the health of those employed therein.
7. Any fire-place or furnace which does not, as far as practicable, consume the smoke arising from the combustible used therein; and which is used for the working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gas-works, or in any manufacturing or trade process whatever; and

Any chimney (not being a chimney of a private dwelling-house), sending forth black smoke in such quantity as to be a nuisance,

shall be deemed to be nuisances liable to be dealt with summarily in manner provided by the Act: provided,—

First. No penalty will be imposed in respect of any accumulation or deposit necessary for the effectual carrying on the business or manufacture if not kept longer than necessary for that purpose, and the best available means have been taken for preventing injury thereby to the public health: *Swaine v. Great Northern Ry. Co.*, 33 L. J. Ch. 399; 4 De G. J. & S. 211.

Secondly. A summons against a person in respect of a nuisance for not consuming the smoke under sub-sec. 7, will be dismissed if the furnace is constructed in such manner as to consume as far as practicable, having regard to the nature or trade, all smoke arising therefrom, and that such furnace or fire-place has been carefully attended to by the person in charge thereof.

Duty of
local
authority
to abate
nuisances.

It is the duty of the local authority to inspect districts for the purpose of detecting nuisances, and to enforce the provisions of the Act; sec. 92. And information may be given

(a) See the Factory &c., Act, 1878, Sch. VI.

to the local authority of any nuisance by a person aggrieved or by any two inhabitant householders of the district ; sec. 93. The local authority, if satisfied the nuisance exists, will serve, on the owner or occupier of the premises where the nuisance arises, a notice requiring the abatement of the same ; sec. 94 : *Riddle v. Spear*, 40 L. T. 130 ; 43 J. P. 317 ; *St. Helen's Chemical Works v. St. Helen's Company*, 1 Ex. D. 196 ; 45 L. J. M. C. 150.

If a person served with such notice makes default to comply therewith within the time specified, or if the nuisance, although abated is, in the opinion of the local authority likely to recur on the same premises, a complaint may be made to a justice and summons issued thereon calling on the person to appear before a court of summary jurisdiction, sec. 95, on the hearing of which summons the court may make an order both requiring abatement and prohibiting the recurrence of the nuisance, and impose a penalty not exceeding £5, and make order for payment of the costs ; sec. 96. The court may prohibit the using a house which is unfit for habitation ; sec. 97. Any person not obeying an order to abate a nuisance, or to use due diligence to carry out such order will be liable to a penalty of 10s. a day during his default ; and any person knowingly acting contrary to an order of prohibition will be liable to a penalty of 20s. a day during such contrary action. The local authority may enter the premises and do whatever may be necessary to abate the nuisance and recover the costs in a summary way ; sec. 98 : *Brown v. Bussell*, L. R. 3 Q. B. 251 ; 37 L. J. M. C. 65.

Disobedience of order of court Penalties.

Where, however, any appeal is made to the quarter sessions as provided by the Act, no liability or penalty will arise, nor any proceedings be taken, or work done under the order until after the determination of the appeal, or unless such appeal ceases to be prosecuted ; sec. 99.

Appeal against order.

In case the nuisance may have been created by two or more persons they may be joined in one proceeding, and one or more of them may be ordered to abate the nuisance (sec. 255) : *Hendon Guard. v. Bowles*, 17 L. T. 597 ; 20 *ib.* 609.

Proceedings.

A private person may make complaint who may be aggrieved by any such nuisance as above specified (sec. 105) ; by private and without notice : *Cooker v. Cardwell* (decided on sec. 13, P. H. A. 1860), L. R. 5 Q. B. 15 ; 39 L. J. M. C. 28.

Complaint person.

Costs may be allowed (sec. 104).

Costs.

Where a nuisance exists within the district of a local authority, but is wholly or partially caused without the

Nuisance caused

partly out of district, proceedings may be had as if such nuisance was wholly within their district; but the summary proceedings can only be taken before a court having jurisdiction in the district where the act or default is alleged to be committed or take place (sec. 108). See also a similar provision as to offensive trades (sec. 115).

Restrictions on offensive trades. A person carrying on an offensive trade, without the written consent of the urban authority, such trade being that of a blood, bone, soap, or tripe boiler, fellmonger, or tallow melter, will forfeit a penalty of £50, and 40s. a day for the continuing such offence: sec. 112. And under sec. 114 it is the duty of the urban authority to make complaint to a justice where any offensive trade or manufacture is carried on causing effluvia which is certified to the local authority by their medical officer, or two medical men, or ten inhabitants,

Summons. to be a nuisance or injurious to health. That the parties causing the nuisance may be summoned before a court of summary jurisdiction; and on such summons should it appear that the person summoned had not used the best practicable means for abating the nuisance, or preventing or counteracting the effluvia, the person so offending (being the owner or occupier of the premises, or foreman or other person employed, or either of them) will be liable to a penalty of £5 and not less than 40s.; and on a second and any subsequent conviction to a penalty double the amount of the last preceding penalty, but not to exceed £200. But the court of summary jurisdiction may suspend its final determination as regards the alleged nuisance arising from an offensive trade if the person summoned undertakes to adopt means to abate the nuisance, or gives notice of appeal to the court of quarter sessions as provided by the Act (sec. 114).

Penalties. Under sec. 116 the medical officer or inspector of nuisances may inspect meat, &c., exposed for sale; and under sec. 117, if such meat, &c., is unfit for food, a justice of the peace may condemn it, and the person to whom it belonged at the time will be liable to a penalty of £20 for every article so condemned, or, without the infliction of a fine, to imprisonment for not more than three months.

Selling unwholesome meat. Inspection. A person obstructing or impeding a medical officer or inspector in the performance of his duty under the Act will be liable to a penalty of £5; sec. 118; *Small v. Bickley*, 32 L. T. 726.

Obstructing officer. Infections diseases; prevention of. Secs. 120 to 130 contain provisions in reference to infectious diseases and hospitals, and for the prevention of the spread of infectious diseases. By sec. 125 a penalty of 40s.

may be imposed on a person removing an infected person from a ship to a hospital. A person while suffering from an infectious disorder wilfully exposing himself without proper precautions ; or entering a public conveyance without notice of his condition to the conductor or driver ; so also a person in charge of such infected person ; or a person who exposes or lends, without previous disinfection, infected clothes or bedding, or using due caution, will be subject to a penalty of £5 ; sec. 126. See *Tunbridge Wells L. B. v. Bisshop*, 2 C. P. D. 187 ; 46 L. J. C. P. 314.

The owner or driver of a public conveyance who may neglect to disinfect a public conveyance which has to his knowledge conveyed an infected person, will be subject to a penalty of £5 ; sec. 127.

A person, including the keeper of an inn, knowingly letting a house, room, or part of a house, in which a person has been suffering from a dangerous infectious disorder, without having the same and the articles therein liable to retain infection, disinfected to the satisfaction of a legally qualified medical practitioner as certified by him, will be subject to a penalty of £20 ; sec. 128. Letting infectious houses.

A person making a false statement when questioned by a person negotiating for the hire of a house or lodging as to the fact of there being, or within six weeks previously having been therein any person suffering from an infectious disease, will be liable to a penalty of £20, or to imprisonment, with or without hard labour, for a period not exceeding one month ; sec. 129. False statements as to infectious houses.

For the prevention of epidemic diseases the Local Government Board may (sec. 139) authorise two or more local authorities to act together, and may prescribe a joint action of such authorities ; and by sec. 140, any person wilfully violating such regulations, or obstructing any person acting under their authority, will be liable to a penalty of £5. Violating orders of L. G. B.

The local authority may make bye-laws under their common seal ; sec. 182, which, under sec. 183, may impose penalties not exceeding 40s. and a copy of any bye-laws, sec. 186, made by a local authority (not being the council of a borough), signed and certified by the clerk of the authority, will be evidence of the bye-laws. See *R. v. Rose*, 24 L. J. M. C. 130. Bye-laws.

Defaulting officers may be summarily proceeded against. Defaulting and subject to imprisonment for six months (sec. 196). officers.

The proceedings for the prosecution of offences under the Summary

proceed-
ings.

Act will be as directed by the Summary Jurisdiction Acts before a court of summary jurisdiction ; sec. 251.

But such practice is confined to cases in which the court is acting judicially ; it does not apply where the court is acting ministerially ; proceedings therefore under sec. 256, for the summary recovery of rates, are not within the Summary Jurisdiction Act, 1879, s. 47, nor will Jervis's Act apply. *R. v. Price*, 49 L. J. M. C. 49.

Jurisdic-
tion of JJ.

Justices may act, although they may be members of the local authority and ratepayers, or liable to contribute to or be benefited by, the rate or fund out of which the expenses to be incurred under the Act may be defrayed ; sec. 258.

But such justice will be disqualified from acting should he be so substantially interested in the result of the hearing as to make it likely that he would have a real bias in the matter : *R. v. Burnley JJ., Ex parte King*, 51 L. J. M. C. [], in which *R. v. Gibbons*, 6 Q. B. D. 168, is dissented from, and *R. v. Milledge*, 48 L. J. M. C. 139 ; 4 Q. B. D. 332, is commented on. See also *R. v. Meyer*, 1 Q. B. D. 173 ; *R. v. Handsworth*, 8 Q. B. D. 383.

Form of
notices.

Notices and other documents under the Act may be in writing or print, or partly so ; and those of the local authority may be authenticated by the signature of the clerk, surveyor, or inspector of nuisances ; sec. 266.

Service of
notices.

Notices, orders, or other documents may be served under the Act by delivery thereof at the residence of the person to whom they are addressed ; or when addressed to the owner or occupier of premises by delivering the same to some person on the premises ; or if no person on the premises, then by fixing the same on some conspicuous part of the premises. They may also be served by post by pre-paid letter, and if by post, shall be deemed to have been served at the time when the letter would be delivered in the ordinary course of post, and it will be sufficient to prove that the letter had been duly posted. A letter, required to be given to the owner or occupier, may be addressed by the description " owner," or " occupier " of the premises (naming them) ; sec. 267.

ROGUES AND VAGABONDS.

The dissolution of the monasteries by Henry VIII. threw on the public bounty numerous beggars, who had before then obtained alms at those institutions. In 39 Elizabeth (1596) an Act was passed for suppressing the mischief ; and even

the ancient Bards, described as "minstrels wandering abroad," were included amongst "rogues, vagabonds, and sturdy beggars" (a).

The Act 5 Geo. 4, c. 83, classes those persons, as, 1. Idle and disorderly persons. 2. Rogues and vagabonds. 3. Incorrigible rogues.

The following are deemed to be "idle and disorderly persons," and who may be committed to the house of correction with hard labour for not exceeding one month :—

Idle and disorderly persons.

1. Every person being able wholly or in part to maintain himself or herself, or his or her family, by work or by other means, and wilfully refusing or neglecting so to do, whereby he or she, or any of those whom he or she may be legally bound to maintain (b), shall have become chargeable to any parish, township, or place.

2. Every person returning and *becoming chargeable* in any parish, &c., from whence he or she had been legally removed by order of justices, unless he or she produce a certificate of acknowledgment of settlement.

3. Every petty chapman or pedlar wandering abroad and trading without a licence or authority.

4. Every common prostitute wandering in the public streets or highways, or in any place of public resort, and behaving in a riotous and indecent manner.

5. Every person wandering abroad, or placing himself or herself in any public place, street, highway (c), court, or passage, to beg or gather alms, or causing, or procuring, or encouraging any child or children so to do.

6. Every person asking alms under a certificate, or other

(a) Dr. Ball, a satirist of the day, wrote of the bards as having become

"Beggars by one consent,
And rogues by Act of Parliament."

Alderman Watts, of Rochester, at the same time, excluded from his charitable bequest for the daily relief of "The Seven Poor Travellers" (a charity still carried out at Rochester) all "rogues, vagabonds, and proctors;"—the "proctor" being then an itinerant priest.

(b) A wife, deserted by her husband, and having no means of

maintenance for her children, cannot be convicted for deserting her children and leaving them chargeable to the parish: *Peters v. Christie*, 2 Q. B. D. 131; 46 L. J. M. C. 177; 36 L. T. 107. A man is not bound to maintain his wife who has left him, and is living in adultery: *R. v. Flintan*, 1 B. & Ad. 227; nor if she leave him by reason of his ill-usage: *Flannagan v. Bishop Wearmouth (Overseers)*, 27 L. J. M. C. 46. The warrant must state an actual chargeability: *R. v. Hall*, 3 Burr. 1636.

(c) See *Ex parte Timson*, post, p. 513 n. (b).

instrument prohibited by the Act, or applying for relief having money in their possession or control. See 11 & 12 Vict. c. 110, s. 10.

Rogues and
vagrabonds.

The following, described as *rogues and vagabonds*, on conviction may be sentenced to not exceeding three months imprisonment with hard labour :—

1. Every person committing any of the following offences after having been convicted as an idle and disorderly person.

2. Every person pretending or professing to tell fortunes, or using any subtle craft, means, or device by palmistry (*a*), or otherwise, to deceive or impose on any of Her Majesty's subjects.

3. Every person wandering abroad or lodging in any barn or outhouse, or in any deserted or unoccupied building or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself or herself.

4. Every person unlawfully exposing to view, in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition ; or exposing, or causing to be exposed, to public view in the window or other part of any shop or other building situate in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition, shall be deemed to have wilfully exposed such obscene print, picture, or other indecent exhibition to public view within the intent and meaning of the Act. See *R. v. Dudgale*, 22 L. J. M. C. 50 ; 1 & 2 Vict. c. 38, s. 2.

5. Every person wilfully, openly, lewdly, and obscenely exposing his person in a public street, road, or public highway, or in view thereof, or in any place of public resort (*b*) with intent to insult any female.

6. Every person wandering abroad and endeavouring by exposure of wounds, or deformities, to obtain or gather alms.

7. Every person going about as gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false pretence.

(*a*) The pretence that the persons hold communion with invisible spirits is a device by palmistry, and within this section : *Monk v. Hiltin*, 2 Ex. D. 268 ; 46 L. J. M. C. 163 ; 36 L. T. 66 ; 25 W. R. 373. It is not necessary to convict under this section that the party should

lead a wandering and vagabond life : *ib.*

As to the form of the conviction, see *R. v. Slade*, 35 L. T. 911 ; Edlin. Q. C., Middlesex Sessions. See also S. C., 2 Q. B. D. 516 ; 46 L. J. M. C. 225 ; 36 L. T. 402 ; 25 W. R. 610.

(*b*) See note to item 14.

8. Every person running away and leaving his wife, his or her child or children (*a*) chargeable, or whereby she or they or any of them shall become chargeable to any parish, township or place : see *R. v. Flintan*, 1 B. & Ad. 227 ; *Cambridge Guardians v. Parr*, 30 L. J. M. C. 241 ; 10 C. B. N. S. 99 ; see also *Horley v. Rogers*, *ante*, p. 196, Tit. Constable.

9. Every woman neglecting to maintain her bastard child, being able wholly or in part so to do, whereby such child becomes chargeable to any parish or union : see 7 & 8 Vict. c. 101, s. 6.

10. A person, under sec. 53, *ib.*, being received into an asylum for houseless poor, and wilfully giving a false name, or making a false statement, or who shall have given on two or more different occasions when received in any such asylum, such person not having changed her name by marriage.

11. Under sec. 55, *ib.* Every poor person returning to and becoming chargeable in an asylum for houseless poor of any district after removal from any parish in such district, will be deemed to have returned and become chargeable without a parish certificate.

12. Every person having in his or her possession or custody any picklock, key, crow, jack, bit, or other implement with intent feloniously to break into any dwelling-house, warehouse, coach-house, stable, or out-building, or being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, or having upon him or her any instrument with intent to commit any felonious act : 5 Geo. 4, c. 83, s. 4. The implements must be upon the person when apprehended and so stated in the conviction : see *R. v. Brown*, 8 T. R. 26.

13. Any person being found in or upon any dwelling-house (*b*), warehouse, coach-house, stable, or out-house, or in an enclosed yard, garden, or area, for any unlawful purpose.

14. Every suspected person or reputed thief frequenting any river, canal, or navigable stream, dock or basin, or any quay, wharf or warehouse near or adjoining thereto, or any street, highway (*c*), or any avenue leading thereto or any place

(*a*) This has reference only to legitimate children : *R. v. Maude*, 2 Dowl. N. S. 58.

(*b*) A person found in a house at night in company with the servants of the house consuming

the master's provisions without his knowledge or consent, may or may not be on the premises for an unlawful purpose : *Kirkia v. Jenkins*, 32 L. J. M. C. 140.

(*c*) The conviction should show

of public resort (a) or any avenue leading thereto, or any street or any highway, or any place adjacent to a street or highway, with intent to commit a felony (sec. 4, 5 Geo. 4, c. 83), and in proving the intent to commit a felony, it shall not be necessary to show that the person suspected was guilty of any particular act or acts tending to show his purpose or intent, and he may be convicted if from the circumstances of the case, and from his known character as proved to the justice or court, it appears his intent was to commit a felony. Prevention of Crimes Act, 1871, 34 & 35 Vict. c. 112, s. 15.

15. By the Vagrant Act Amendment Act, 1873, 36 & 37 Vict. c. 38, repealing by sec. 5 the Vagrant Act Amendment Act, 1868, 31 & 32 Vict. c. 52, it is enacted by sec. 3: Every person playing or betting by way of wagering or gaming in any street, road, highway, or other open or public place, or in any open place to which the public have or are permitted to have access, at or with any table or instrument of gaming, or any coin, card, token, or other article used as an instrument or means of such wagering or gaming, at any game or pretended game of chance, shall be deemed a rogue and vagabond within the true intent and meaning of 5 Geo. 4, c. 83, and as such may be convicted and punished under the provisions of *that* Act, or in the discretion of the justice or justices trying the case, in lieu of such punishment by a penalty for the first offence not exceeding 40s., and for the second or any subsequent offence not exceeding £5. The Act of 1873 is to be read as one with 5 Geo. 4, c. 83, by which, sec. 4, every person playing or betting in any street, road, highway, or other open or public place, at or with any table or instrument of gaming at any game or pretended game of chance, is made punishable as above noted as "under the class of" rogues and vagabonds, and with imprisonment with hard labour for any time not exceeding three months.

The playing a pretended game of chance, as the three card trick, called "odd man," in a railway-carriage while travelling on the "line" would be an offence under this

the highway led to or adjoined to a river, canal, or place of public resort, &c.: *Ex parte Timson*, L. R. 5 Ex. 257; 22 L. T. 614; 39 L. J. M. C. 129; 18 W. R. 849; where the case *In re Jones*, 7 Ex. 586; 21 L. J. M. C. 116, is adhered to, and *R. v. Brown*, 17 Q. B. 833; 21 L. J. M. C. 113, not followed.

(a) A railway station: *Ex parte Davis*, 26 L. J. M. C. 178; an alehouse: *Cole v. Coulton*, 29 L. J. M. C. 125; a private house where a sale by auction is going on: *Sewell v. Taylor*, 29 L. J. M. C. 30; *Ex parte Cross*, 26 L. J. M. C. 28; 1 H. & N. 651, are each deemed public places.

clause, and the conviction should allege that the carriage was "then and there" used and travelling on the railway; see *Ex parte Freestone*, 25 L. J. M. C. 121.

So an omnibus is a public place while used for travelling; as Alderson, B., said: "A person in an omnibus may be said to be in the street," *ib.*: and *R. v. Holmes*, 22 L. J. M. C. 122; 1 Dear. C. C. 207; *In re Jones*, 7 Ex. R. 586; 21 L. J. M. C. 116.

See also *Ex parte Timson*, *supra*, p. 513 n. (b).

Depositing a half sovereign as a bet on a dog-race is not "betting with a coin as an instrument of gaming at a game of chance," decided on the repealed Act, 31 & 32 Vict. c. 52, s. 3. *Hirst v. Molesbury*, L. R. 6 Q. B. 130; 40 L. J. M. C. 76; 23 L. T. 555.

Tossing with halfpence is not within the section: *Watson v. Martin*, 34 L. J. M. C. 50; 11 L. J. 372.

Under sec. 5 of 5 Geo. 4, c. 83, the following are deemed to be incorrigible rogues:—

Incorrigible rogues.

1. Every person breaking or escaping out of any place of legal confinement before the expiration of the term for which he or she shall have been committed, or ordered to be confined by virtue of this Act.

2. Every person committing any offence against this Act, which shall subject him or her to be dealt with as a rogue and vagabond, such person having been at some former time adjudged so to be and duly convicted thereof (a).

3. And every person apprehended as a rogue and vagabond, and violently resisting any constable or other peace officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended, shall be deemed to be an incorrigible rogue, and such offender may be committed to the house of correction, to remain until the next quarter sessions, and kept to hard labour during such period. And by sec. 10, such person the court will examine into the circumstances of the case, and may further imprison the offender with hard labour for a time not exceeding one year from the time of making such order, and if a male, the punishment of whipping may be ordered (b).

(a) Lord Lyndhurst, when Attorney-General, was of opinion that a person once convicted, under the previous Vagrant Acts as a rogue and vagabond was, under the above words to be considered an incorrigible rogue

and vagabond on a second offence of a like nature: see *Burn's Justice*.

(b) All convictions under this sec. are to be returned to the Q. S. sec. 17.

The appeal. Sec. 14 of 5 Geo. 4, c. 83, gives a general appeal to the quarter sessions to all persons aggrieved by any act or determination under the statute done or made by any justice under the Act; but when the sentence is one of imprisonment, the form of appeal will be that directed by the Summary Jurisdiction Act, 1879, which see *infra*, ss. 19, 31.

Costs. Although by sec. 14 the justices are to be made the sole respondents, the person who may be the informant, but not to be made a party to the appeal, is deemed the real respondent as having set the law in motion, and held to be liable for payment of the costs. *R. v. Smith*, 29 L. J. M. C. 216.

Appellant not appearing at sessions may be arrested. By 1 Vict. c. 38, a warrant may be issued by the quarter sessions for the apprehension of any person not appearing to prosecute his appeal under 5 Geo. 4, c. 83.

SPECIAL CASE.

Sessions not to delegate authority. The sessions cannot delegate its judicial authority (*a*). Bac. Abr. "Offices" (A): *R. v. Townsend*, 16 Vin. Abr. 417; 2 Nol. P. L. 4 Ed. 468; *R. v. Newmarket Railway Co.*, 15 Q. B. 692; 19 L. J. M. C. 241.

Reference to judge of assize. Formerly, when the justices doubted on a point of law arising on an appeal before them, they submitted a statement of the facts for the opinion of the judge of assize in accordance with the terms of their commission:—"if a case of difficulty shall happen to arise let judgment in no wise be given thereon before you unless in the presence of one of our justices of the one or the other bench, or of one of our justices of assize in the county." The practice was to adjourn the sessions that the judge of assize might be consulted, and then, in conformity with his advice, judgment was given (*b*): *Lamb. Eiren.* 35—38; to carry out this reference to the judges no *certiorari* was necessary; Alderson, B.: *R. v. Gamble*, 16 M. & W. 397.

(*a*) The sessions may refer matters before them to referees or arbitrators to report thereon *in aid* of their judgment, but not for final decision: see 12 & 13 Vict. c. 45, s. 13; *R. v. Linthouse*, 19 Vin. Abr. 348. See tit. "Arbitration."

(*b*) The sessions did not always

refer the whole case to the judge of assize: sometimes only a particular point, reserving the whole matter for themselves: per *Probyn, J.*, in *R. v. Tedford*, Burr. S. C. 57 (A. D. 1790); and which Lord Hardwicke designated as an "impertinent reference," S. C.

Traces of the practice of consulting the judge are as late as 1734. In H. T. 11 Will. 3 (1699), an attempt was made to reserve a case for the opinion of the Court of King's Bench, which the court refused to entertain, and remitted it to the judge of assize. In the time of Lord Hardwicke (*R. v. Tedford*, 2 Burr. S. C. 57) the modern practice of stating a special case existed, but the old practice was not completely superseded. In 1807, the time of the 1st Ed. of Nolan's Poor Laws, the modern practice had been fully brought into adoption, and the question whether a case was one of difficulty or not, fit to be reserved for the opinion of the Court, was determined by the sessions; and if it were one of difficulty, a case was stated for the opinion of the superior court.

This reference to the judge was clearly of a consultative character, and was not a parting with the jurisdiction; in fact the sessions were not bound to adopt the opinion of the judge, and the decision eventually come to by the sessions, was liable to be reviewed by the superior court: *Crueden v. Leyland*, 2 Str. 903; *R. v. Brightwell*, 3 Keb. 464; *Stanlock v. Bampton*, *ib.*, 674. And see *R. v. Tedford* (*supra*), the court exercising the inherent right to correct the errors of other courts: Co. Litt. 4 Inst. 71; Bac. Abr. "Court of K. B." (A) 3; 3 Bl. Com. 42 (*a*). Reference consultative.

But this practice of consulting the judge of assize has long since fallen into abeyance.

The old forms of the orders of sessions set out the recitals at length on which the order was based: *R. v. St. Luke's Hospital*, 2 Burr. 1053; *R. v. St. Bartholomew-the-Less*, 4 *id.* 2435; *R. v. St. Paul's, Convent Garden*, Cald. S. C. 158; and, during the last century, those forms were used simultaneously with the more modern one of stating the facts in a special case which accompanied and was attached to the order of sessions: see *R. v. Newtown*, 1 Ad. & E. 238; 3 L. J. M. C. 79. Old forms of S. C.

But a general practice has grown up of obtaining the opinion of the courts by means of special cases; and it is now the practice for the sessions to hear the evidence on an appeal, and having come to a decision upon them, should Present practice.

(*a*) On a reference to the judge on the sole action of the sessions, the Court of King's Bench would entertain the question of quashing the order of sessions: *R. v. Northampton*. Cald. S. C. 30; but

not so where the parties had consented to the reference: *R. v. Nailand*. Burr. S. C. 793; see also *R. v. Alverstone*. Holt. 507; *R. v. Moseley*, 2 Burr. 1040.

they entertain any reasonable doubt on their determination, to state the facts, as found by them, in the form of a special case on which to ask the opinion of the superior court; the sessions to make their order a speaking order, stating their decision provisionally in the alternative, and leaving the ultimate event to depend on the judgment of the court: see Lord Denman's remarks in *R. v. Kesterin*, 3 Q. B. 810; 13 L. J. M. C. 78; *R. v. Stoke-upon-Trent*, 5 Q. B. 303; 13 L. J. M. C. 41—43: see also *R. v. Pilkington*, 5 Q. B. 662; *R. v. Ashton-nigh-Birmingham*, 12 Q. B. 26; 19 L. J. M. C. 17.

Q. S. acting
within
jurisdic-
tion: Q. B.
can only
act on S. C.

Without such special case being granted by the sessions the court has no power to review their decision: *R. v. Allen*, 15 East, 336; *R. v. Carnarvon JJ.*, 4 B. & Ald. 86; *R. v. Cheshire JJ.*, 8 A. & E. 398; *Wildes v. Russell*, L. R. 1 C. P. 722; if the sessions act within their jurisdiction; see *R. v. The Cheltenham Commissioners*, 1 Q. B. 467; *R. v. The Sheffield Ry. Co.*, 11 A. & E. 194; *Colonial Bank of Australia v. Willan*, 43 L. J. P. C. 39; 5 L. J. P. C. 417; 30 L. T. 237; *Ex parte Bradlaugh*, 3 Q. B. D. 509; *R. v. Bolton*, 1 Q. B. 66; *R. v. Warwickshire*, E. & B. 837; 25 L. J. M. C. 119; *R. v. Hyde*, 21 L. J. M. C. 94; *R. v. St. Alban's*, 22 L. J. M. C. 130; where, if the sessions do not act within their jurisdiction, their proceedings may be quashed under writ of *certiorari*.

Granting
the S. C.
encouraged
by Q. B.

The court will not compel the sessions to *grant* a special case; the granting the case is entirely in their discretion: *Ex parte Jarvin*, 9 Dowl. P. C. 120; *R. v. Oulton*, Burr. S. C. 64; *R. v. Preston-on-the-Hill*, Burr. S. C. 74. But the granting the special cases by the sessions has always been considered by the courts as a wholesome and useful practice. In *R. v. Preston-on-the-Hill*, it was remarked by Lord Hardwicke, "that it was a thing much to be censured and discountenanced, when an inferior jurisdiction endeavoured to preclude the parties from the opportunity of obtaining the opinion of the superior court;" and Lord Denman, C. J., in *R. v. The West Riding (Warmsworth v. Doncaster)*, 1 A. & E. 606, remarked that the sessions could not do better than grant a case if they doubted the legality of their own decision; but, as Bayley, J., said, in *R. v. Darley Abbey, Inhabitants*, 14 East, 285, they ought not to be induced to send up a case if they had no doubt upon the question in their own minds. A case should not be stated on a point which has been already decided; the court would refuse to entertain it: *R. v. St. John Evangelist*, 2 Jur. 46; nor will the court receive a case which has not

Where
Q. S. doubt
the law;

but not on
decided
points.

been first fully heard and determined by the sessions: *R. v. Sutton Coldfield*, 29 L. T. 840; 9 L. R. Q. B. 153, and 43 L. J. M. C. 57; *eo nom. R. v. London and North-Western Ry. Co.* See also remarks of Cockburn, C. J., in *Ex parte Curtis*, 47 L. J. M. C. 35; 3 Q. B. D. 13; *R. v. Kent JJ.*, 41 J. P. 263.

It is only in rare instances, and under peculiar circumstances, when a case has been granted, that a mandamus has been issued to justices to state a special case; see *R. v. Effingham*, 2 B. & Ad. 393 (n.); *R. v. Pembrokeshire JJ.*, 2 *ib.* 391. The mandamus was refused where the sessions had declined to sign a case which omitted in its opinion a material point: *Ex parte Jarvin*, 9 Dowl. P. C. 120; *R. v. Suffolk JJ.*, 1 Dowl. P. C. 168.

As to a special case stated under the Highway Acts, see *R. v. Shiles*, 1 Q. B. 919; *R. v. Phillips*, 35 L. J. M. C. 217; L. R. 1 Q. B. 648.

The court will entertain a case stated on an appeal against a conviction: *R. v. Allen*, 15 East, 333; but not a case reserved upon the trial of an indictment at sessions: *R. v. Salop JJ.*, 13 East, 95; *Duncan v. Turner*, N. of C. (1881) p. 82; see *R. v. Scaife*, 21 L. J. M. C. 221.

When a case has been granted on the application of the appellants, who abandon their remedy thus sought, an application by them for a mandamus to the sessions to enter continuances will be refused: the court will not permit the party to have a double remedy. *R. v. W. Riding JJ.*, 1 A. & E. 606; *R. v. Suffolk JJ.*, 6 A. & E. 109; *R. v. Northamptonshire JJ.*, *id.*, 111 (n.); see *R. v. West Riding JJ.*, 11 L. J. M. C. 34.

But where the attempt to state the case failed, the counsel, not agreeing on the facts and terms on which it should be stated, and the order made for the case being merely conditional, and not a final decision, a mandamus to enter continuances was granted. *R. v. Suffolk JJ.*, 1 D. P. C. 163; *id.* 484. The questions in those cases, as to the *certiorari*, would not now arise; and as in *R. v. Staffordshire JJ.*, 7 E. & B. 939; 1 D. P. C. 163; *R. v. Sussex JJ.*, 1 M. & F. 734; *R. v. Kaye*, 1 D. & R. 436; 5 A. & E. 112; S. J. A. 1879, s. 40.

It was held in *R. v. Bolton*, 7 Q. B. 387, that where an order of removal was quashed on a matter of form there was nothing final in their decision, and the respondents having obtained an order for a special case on the point, and taking no steps to state it, the respondents were not precluded from removing the pauper a second time, the respondents being considered to have abandoned their case.

Facts must be found by Q. S.

Mandamus to state case refused.

S. C. on a conviction; not indictment.

Party cannot have mandamus and S. C.

Where the stating S. C. fails, mandamus to hear.

Removal of pauper where S. C. abandoned.

Judgment
on case
final with
Q. S.

The judgment of the superior court on the special case became the final judgment of the Court of Sessions, to be adopted and entered of record by them. *R. v. St. Peter's, Droitwich*, 9 Q. B. 886, 935; 26 L. J. M. C. 179; see also *R. v. Staffordshire JJ.*, 7 E. & B.

Jurisdic-
tion of
Appellate
Court.

The effect of stating a special case has been much considered recently as affected by the Judicature Act, 1873, and whether the decision of the Court of Queen's Bench on it was "consultative" or "mandatory": and, further, whether there was an appeal on it to the Appellate Court from the decision of the Queen's Bench. These points were raised and decided by the House of Lords in *Walsall v. The L. & S.-W. Ry. Co.*, 48 L. J. M. C. 65; H. L. App. Ca. 30; 39 L. T. 453; 27 W. R. 189; reversing the judgment in S. C. 47 Q. B. 711; 3 Q. B. D. 449; 38 L. T. 665; 26 W. R. 705.

Decision
" manda-
tory."

It was held in that case that the decision of the Superior Court was "mandatory," and not "consultative," and came within the word "order" in the 19th section of the Judicature Act, 1873, and was not included within sec. 45. Lord Penzance said: "the action of the Court of Queen's Bench cannot be consultative merely if the result of what was done was to make an order which dealt with the proceeding itself, and put an end to the very order of the quarter sessions. If the action of the Queen's Bench in the matter was purely consultative, it would follow that they would remit, in some form, the result of that advice and consultation, to the court of quarter sessions, and that that court would act upon it. But the *certiorari* bringing up the proceedings *put an end to all further jurisdiction* in the court of quarter sessions to deal with the matter." The judges, then, of the Queen's Bench could either quash, or let the proceedings stand, but the magistrates in quarter sessions were *functi officio*, they could no longer deal with the matter either by way of affirming or of quashing the order (a). It is then abundantly made out that, according to the old practice of the court, the function of the Queen's Bench was to consider an order of the quarter sessions upon the face of it, and to deal with the facts stated as they there appeared, and apply the law to them.

In a special case stated by the sessions under the Public

(a) In a special case stated on a question of rating the Court of Queen's Bench cannot alter the rate, but the sessions subse-

quently make any necessary alteration of the rate in accordance with the court's decision.

Health Act, 1875, sec. 269, sub-sec. 7, which gives *statutable power* to the sessions, if they think fit, to state the facts of an appeal under the statute specially "for the determination of a superior court," the Court of Appeal held that the statement of such case was an appeal within the 45th sec. of the Judicature Act, 1873, and not to the Q. B. D. in the exercise of its well known jurisdiction over inferior courts, and that the decision of the Q. B. D. was final upon that court refusing leave to appeal. *Hinton v. The Swindon New Town Local Board*, 49 L. J. Q. B. 522; 42 L. T. R. 614; 28 W. R. 80 (Lord Coleridge, L. C. J., Brett and Cotton, L.JJ.).

But in *R. v. Savin*, 6 Q. B. D. 309, in an appeal under the Highways and Locomotives Amendment Act, 1878 (41 & 42 Viet. c. 77), s. 23, which contains no such clause as that above referred to in (Public Highway Act, s. 269, sub-s. 7), the Court of Appeal (Lord Selborne, L. C., Baggallay and Brett, L.JJ.) held that there *was* the right of appeal to the Appellate Court *without* the leave of the court below; following the suggestion thrown out by Earl Cairns (L. C.), in *Walsall v. the London and North-Western Railway* (*supra*).

The distinction seems to be, that where the Court of Queen's Bench is acting in its inherent right as a Crown court, to review a decision of the quarter sessions or any other court, it is then acting not as a divisional court within the meaning of the 45th section of the Judicature Act, 1873, or under any statutable power, but is exercising its common law jurisdiction; and its rule or order then made, is an order, in the first instance, within the 19th section of the Judicature Act, 1873, and no leave to appeal to the Appellate Court is then necessary. In other instances, as in cases stated under the Jervis's Acts, or Baimes' Act, or the other Acts giving the statutable power to state a case for the opinion of a superior court, and for the statement of which case no writ of *certiorari* would be required, leave to appeal from the divisional court *would* be necessary.

Where the statute had taken away the *certiorari*, no special case could be stated even with the consent of the parties: *R. v. Chantrell*, 44 L. J. M. C. 94; 10 L. R. Q. B. 587; 33 L. J. 305; and Patteson, J., remarked in reference to a special verdict: "I cannot see how the parties can give us any power which the law itself does not give." *Sanders v. Fanzeller*, 4 Q. B. 276; see also *R. v. Middlesex JJ.*, 8 D. & R. 117. *R. v. Chantrell* may be considered as overruling *R. v. Dickenson*, 7 E. & B. 831; see also *R. v. Michaelstone*

Q. B. acting as the Crown Court.

Certiorari abolished as to S. C. from Q. S.

Vedoes, 2 Nol. 558; *R. v. Sussex JJ.*, *ib.* 558 (see *ante*, "*Certiorari*").

But now, section 40 of the Summary Jurisdiction Act, 1879, enacts that "a writ of certiorari or other writ shall not be required for the removal of any conviction, order, or other determination in relation to which a special case is stated by a court of general or quarter sessions for obtaining the judgment or determination of a superior court." (See *sup.* sec. 269, P. H. A. 1875.) This provision will remove altogether the difficulty raised in *R. v. Chantrell*, and the obstacle of the writ of *certiorari* being taken away being removed by its abolition as to cases from sessions; the sessions will now have no impediment in its way to state a special case in all appeals whether the particular statute has taken away the *certiorari* or not. See *Clarke v. The Alderbury Union*, 50 L. J. M. C. 33—35 (tit. "*Certiorari*").

Clerk of
the Peace
to trans-
mit S. C.
direct to
Crown
Office.

In the case of *Clarke v. Alderbury Union*, a suggestion was thrown out that in lieu of the case from sessions being removed by *certiorari*, the clerk of the peace should transmit it direct to the Crown Office. That course would, in effect, result in keeping the proceeding on the *crown* side of the court, and, as before, retaining it, on that side, independent of the general jurisdiction of the other divisions of the Q. B. D., as in the case of *Hinton v. The New Town L. B.*, *sup.* p. 520.

Costs.
Rules of
Court,
1880, Ord.
LXII.
r. 55.

The old practice was for recognizances to be entered into providing for costs before the issue of the *certiorari*. But application may now be made for costs under the Rules of Court, 1880, Order LXII., rule 55, by which the Rules of the Superior Courts (Order LV.) are made applicable to all civil proceedings on the crown side of the Q. B. D. Rule 59, Ord. LXII., was not intended to be confined to the three proceedings, of a *quasi* criminal nature, therein mentioned, *mandamus*, *quo warranto*, and prohibition, which are to be deemed as civil proceedings. That rule was so framed *ex abundanti cautela*; and the general policy of the order is that the costs, on the hearing the special case, shall be in the discretion of the Court. See *Clarke v. The Alderbury Union* (*supra*).

There will, of course, remain many instances in which the *certiorari* may still issue to the sessions, or to any other jurisdiction, to bring up orders, or proceedings, for review, independently of any special case, in which the old practice will still prevail, as where the inferior court has acted without, or in excess of jurisdiction.

The Summary Jurisdiction Act, 1879, having removed the necessity of issuing the writ of *certiorari* to bring up a case stated by quarter sessions, all those cases which have been determined in the procedure under 13 Geo. 2, c. 18, s. 5, that the writ should be obtained within six months, and under 5 Geo. 2, c. 19, as to recognizances will not now apply; and it will, therefore, result in this, that when a case has been granted, the judgment of the sessions will *not* become absolute after the expiration of the six months as in *R. v. Staffordshire JJ.*, 26 L. J. M. C. 179; 7 Ex. B. 935. There is now no limit of time within which the order of sessions will become absolute by the laches of either party. Upon a case being granted the sessions virtually say that the appeal shall be adjourned over until the decision is made on it; and should the clerk of the peace omit to enter the adjournment or the appeal be respited, the omission may at any time be supplied under a *mandamus* to enter continuances: *R. v. Suffolk*, 1 D. P. C. 163, 167, citing *R. v. Sussex*, 2 Bott. pl. 751, 5th ed.

Effect of
sec. 40
S. J. A.
1879.

Time not
now limited
to six
months for
S. C.

When the parties cannot agree on the facts to be stated in the case, the course will be to apply to the chairman of the court to state one for them, and on his signing a case and transmitting it to the Queen's Bench Division the case will be received as a conclusive statement: see *R. v. Matlock*, 5 B. & Ad. 883. Should it be agreed at sessions that a case should be stated for a superior court without going into all the facts before the sessions, it is usual to arrange, that should the counsel not agree to the facts, the case should be referred to a barrister to be settled as on arbitration.

Where
parties can-
not agree
chairman
to state
case.

The sessions are limited in the statement of a case to the question of law arising on the facts found by them: *R. v. Yeomans*, Crompton, J., 1 L. T. 370; they cannot make the superior court a court of appeal on a question of fact: *Hargraves v. Taylor*, 32 L. J. M. C. 111 (*per* Blackburn, J., 112); *Newman v. Baker*, 8 C. B. 200; *Belasco v. Hannant*, 31 L. J. M. C. 225; *Taylor v. Oram*, *ib.* 252; see also *R. v. Rayles*, 45 L. J. M. C. 61; *Cornwell v. Sanders*, 32 L. J. M. C. 6. Nor should they ask the court to find any fact from evidence stated; see Lord Kenyon's remarks in *R. v. Lyth*, 5 T. R. 327; *R. v. Rainham*, *ib.* 240; Lord Ellenborough in *R. v. Watson*, 7 East, 214. The following are instances showing what the sessions should find: as, where a word has a technical or local meaning, the sessions should find its meaning and application: *R. v. Thornham*, 6 B. & C. 733. So also in a settlement case, whether a contract of service was dissolved by mutual con-

Limit of
statements
in S. C. to
points of
law.

To find
facts.
Instances
of findings.

sent; or that the master dispensed with the pauper's service, should be found by the sessions and not be left to the court to find on evidence stated: *R. v. St. Peter Mancroft*, 8 T. R. 477; *R. v. Bottisford*, 4 B. & C. 84; 6 D. & R. 99; 1 *R. v. Roxby*, 10 B. & C. 51; *S. C. R. v. Roxley*, 5 M. & R. 40; and *R. v. Illminster*, 1 East, 83.

Whether or not there has been fraud in the proceedings must be expressly found by the sessions. Fraud, said Lord Kenyon, is never to be presumed, however pregnant the case may be with it, if not stated. See *R. v. Tillingham*, 1 B. & Ad. 180; *R. v. St. Marylebone*, 16 Q. B. 299; *R. v. Llanfihangel Abercwin*, 4 N. & M. 355; *R. v. Fillingley*, 2 T. R. 711; *R. v. Preston*, 2 Bott. pl. 428; *R. v. Weston*, Burr. S. C. 166. If stated, the conclusion of the sessions will be sustained if any grounds. *R. v. Llandrinio*, 4 T. R. 473; *R. v. Barnston*, 7 A. & E. 864.

But the court will enquire into whether the fraud is such as will prevent a settlement: as where the sessions thought a pauper had been born in an extra-parochial place by the fraudulent contrivance of a ratepayer; the Court quashed the order as the fraud must have been that of the parish officer to destroy the settlement. *R. v. Mattersey*, 4 B. & Ad. 211.

The sessions stated their opinion to be that all transactions by masters to prevent settlements were fraudulent; the court quashed the order, as the fraud must be on the hiring so as to prevent a settlement. *R. v. Mursley* 1 T. R. 694.

Where in fact the sessions state facts on which they find fraud, and the circumstances do not warrant the conclusion that the fraud affects the question of settlement in law, the court will quash the order; *R. v. Great Sheepy*, 8 B. & C. 74; *R. v. Kilby*, 2 M. & S. 501; *R. v. Great Glenn*, 5 B. & Ad. 188; *R. v. Owersby-le-moor*, 15 East, 356. If the sessions find fraud generally, the court is bound by their finding; but if they state the facts particularly, the matter is as much open for the determination of the court as the sessions: *per Lord Hardwicke*, *R. v. Kibworth Harcourt*, 7 B. & C. 790.

The sessions should find whether a former wife was alive at the time of a second marriage. *R. v. Harborne*, 2 A. & E. 540. It should be stated whether the tenant occupied under a new contract, or as executor of the former tenant, *R. v. Barnard Castle*, 2 A. & E. 108. Whether woods be saleable underwoods, *R. v. Narberth North*, 9 A. & E. 815. Whether landlord or tenant are rateable to the land tax, *R. v. Folkstone*, 3 T. R. 505; *R. v. Rainham*, 5 T. R. 240.

Whether a quarry be within the meaning of a mine, *R. v. Dunsford*, 2 A. & E. 568. Whether there was a contract of hiring by the year, *R. v. Seacroft*, 2 M. & S. 472; *R. v. St. Andrew, Cambridge*, 8 B. & C. 664. Whether there was a dissolution of the service, or a dispensation of service under it, *R. v. St. Peter, Mancroft*, 8 T. R. 477; *R. v. Bottesford*, 4 B. & C. 84; *R. v. Roxby*, 10 B. & C. 51; S. C. *R. v. Roxley*, 5 M. & R. 40. Whether the contract was a hiring or an imperfect apprenticeship, *R. v. Ightham*, 4 A. & E. 939. Whether the apprentice was assigned to or served a second master with the consent of the first, *R. v. St. Cuthbert, Wells*, 5 B. & Ad. 939. Whether an occupation was ancillary to a service or not :—as servant or tenant, *R. v. Bishop-ton*, 9 A. & E. 824. Whether the tenancy was weekly or yearly, *R. v. Great Glenn*, 5 B. & Ad. 188. What is the reasonable rent the property may be expected to be let at by the year, *R. v. Westbrook*, *R. v. Everist*, 10 Q. B. 178. Whether a pauper is irremovable, *R. v. Blanshard*, 13 Q. B. 318. Whether a mother is able to maintain her illegitimate child, or the father has made provision for it, *Smith v. Roche*, 28 L. J. C. P. 237. If the father has made an agreement with the mother, whether he has performed it, and a statement of the amount of it, *Pollitt v. Koetzow*, 29 L. J. M. C. 128.

The sessions may set out a written contract and ask whether such document in law affects the settlement, or creates a hiring or not : see *R. v. Aston-nigh-Birmingham*, 12 Q. B. 26; 19 L. J. M. C. 17; *R. v. Billingham*, 5 A. & E. 676. But the sessions should first decide on the effect of the document for themselves, and then ask the court if they are right or wrong. And it will be incumbent on the side disputing the conclusion to satisfy the court that the sessions were wrong. *R. v. Snape*, 6 A. & E. 278; *R. v. Pilkington, Inhabitants*, 13 L. J. M. C. 61.

When the question raised is one in the discretion of the sessions and they have exercised it the court will not interfere. *R. v. Pilkington (supra)*; *R. v. London and North-Western Railway*, 43 L. J. M. C. 57; *R. v. Kesteven*, 3 Q. B. 819; 13 L. J. M. C. 78; *R. v. Martin-cum-Grafton*, 10 Q. B. 971; 16 L. J. M. C. 159; however wrong their decision : *R. v. Kent JJ.*, 41 J. P. 263; *R. v. Middx. JJ.*, *re Slade*, *ante*, p. 65.

The question on a preliminary inquiry as to whether a document has been sufficiently searched for to let in secondary evidence is for the sessions, as it would be for the judge at

The Q. B. will not re-view the "discretion" of JJ.

Nisi Prius, and their finding would be conclusive. *R. v. Kenilworth*, 7 Q. B. 642; *R. v. Saffron Hill*, 1 E. & B. 93; *R. v. Braintree*, 28 L. J. M. C. 1.

Form of
S. C.

The form in which the case should be stated is directed by R. G., H. T., 1862, (2 B. & S. 60), to be made in separate paragraphs, which, as nearly as may be, should be confined to a distinct portion of the subject, and every paragraph numbered consecutively; and unless such rule is complied with no costs will be allowed. So also where evidence and documents are set out in an appendix, they must also be in separate paragraphs (a). *Hadley v. Perks*, L. R. 1 Q. B. 444. This rule will be strictly enforced. *Hill v. Thornicroft*, 7 Jur. N. S. 103; see also *R. v. Sutton Coldfield*, *sup.* p. 518.

The case should contain the full reasons for the order of the sessions, and no material circumstances should be withheld. In *R. v. Tedford*, Burr. S. C. 63, Lord Hardwicke said, "The question was whether the *whole fact* appeared to us;"—"I own I thought the *whole case* was *sufficiently* before us: otherwise the justices must have done a very impertinent thing in representing this to be the *true state of the case*." See also *R. v. Dursley*, 6 T. R. 53.

The case should be so stated as to raise the whole question or questions of law in dispute so as to enable the court to bring the appeal to a final decision. *St. James', Westminster v. St. Mary, Buttes*, 29 L. J. M. C. 26; *R. v. Sutton Coldfield* (*supra*), p. 518.

The court will decline to decide a mere preliminary point, *Ex parte Curtis*, 47 L. J. M. C. 35; 3 Q. B. D. 13 (b). (Cockburn, C. J.)

No fact or finding should be omitted which is material to the case. *R. v. Tidford*, Burr. S. C. 61; *R. v. The Marquis of Salisbury*, 8 A. & E. 716; the sessions having, as they should have, heard the whole of the evidence, and decided the appeal, subject to the opinion of the court. *R. v. Marton-cum-Grafton*, 10 Q. B. 971; 16 L. J. M. C. 159; *R.*

(a) See the Rules of Court, Judicature Act, 1875. Order xxxiv., r. 3.

(b) In this lies the distinction between the decision on a special case, and the issuing a mandamus to the sessions to hear and determine the appeal. The mandamus might involve the preliminary ob-

jection; and if on the return to the rule *nisi* it appeared, for instance (as was the case in *Ex parte Curtis*), that the appellant's notices were insufficient, the court would entertain that question, and would refuse the rule if no good result could follow from making the rule absolute.

v. Sutton Coldfield (supra); *R. v. Kesteven JJ.*, 3 Q. B. 810; *R. v. Kent JJ.*, 41 J. P. 263.

And the case should conclude by asking the opinion of the court in the alternative, if the decision of the sessions is right, the order to be confirmed;—if otherwise, the order to be quashed. The question cannot be put so that the case is to be again remitted to the sessions for further determination. *R. v. Stoke-upon-Trent*, 5 Q. B. 303; *R. v. Wistow*, 3 Q. B. 815 (n.); *R. v. Macclesfield, id.* 822 (n.); *R. v. Ickham, id.* 815 (n.); *R. v. Worth*, 4 Q. B. 134, n. See also *R. v. St. Paul's, Exeter*, 10 B. & C. 12; *R. v. Ightham*, 4 A. & E. 937; 4 Burn's Jus. "Poor," 805, 30th ed. by Davis.

The court will not consider any objection which is not stated on the case, even although it may go to the jurisdiction of such orders which has not been raised by the case itself: *R. v. Heyop*, 15 L. J. M. C. 70; 2 N. S. C. 270; *R. v. Hartpury*, 8 Q. B. 566; 16 L. J. M. C. 105 (a). The court is bound by the facts found by the sessions, and will not go beyond them: *Burr. S. C.* 57; 4 T. R. 473; *R. v. Tyrley*, 4 B. & A. 624. It is only the law applicable to those facts which the court will determine. See *R. v. Hurdiss*, 3 T. R. 497; *R. v. Rainham*, 5 T. R. 240; *R. v. Lyth*, 5 T. R. 327; *R. v. Bottesford*, 4 B. & C. 84. See *R. v. Ardington*, 1 A. & E. 260 (which was observed upon *in arguendo*, 3 A. & E. 162, and *per Cur.*, 2 Q. B. 311), in which the court disregarded and reversed the decision of the sessions on the evidence which was, mistakenly, set out in the case. So the court will not be concluded by the finding of the sessions as stated in the case, where the finding is contradictory to the facts proved, and set out in the case as constituting the ground of their decision: as where the sessions found the fact of a coming to settle, and referred it to the court *with the facts* on which their finding was grounded as a matter of law: *R. v. Woolpit*, 4 A. & E. 205; and see *R. v. Wishford, ib.* 224. In *R. v. Woolpit*, instances are quoted where the court had adjudged on matters of fact when brought before it for opinion on special case. See *R. v. St. Mary, Lambeth*, 7 Q. B. 587; *R. v. Newtown*, 1 A. & E. 238.

But the court will not be too critical in examining the grounds of the decision of the sessions on matters of fact if it appears that any exist; or interfere with or reverse the decision unless it be manifestly wrong: *R. v. Rostiston*,

Court of Q. B. confined to statements on S. C.

Court not at all times bound by finding of sessions.

Court not too critical on the finding unless manifestly wrong.

(a) The question of want of jurisdiction may be considered on a rule for a writ of *certiorari*.

See *R. v. Surrey, n. (a), ante*, p. 314; or *mandamus, Curtis v. Buss, ante*, p. 528, n. (b).

8 B. & C. 668; *R. v. St. Andrew the Great*, 8 B. & C. 664; *R. v. Snape*, 6 A. & E. 278; *R. v. Narberth North*, 9 A. & E. 815; *R. v. Bottesford*, 4 B. & C. 84; *R. v. Perkins*, 14 Q. B. 229; *R. v. Pilkinton*, 13 L. J. M. C. 61; and see the notes to Burn's *Jus. Peace*, v. 4, pp. 807-9.

In *R. v. Great Wishford*, 4 A. & E. 224, Coleridge, J., said:—"The line of demarcation is not plain between cases in which the court is and is not bound by the finding of the sessions, but there is clearly no instance in which the court has reversed their decision unless they have manifestly come to a conclusion which was wrong, either as being unsupported by the facts or as being contradictory to them. Every one will agree that the jurisdiction upon matters of fact is in the sessions; the Court of Queen's Bench has it only when a matter of fact is referred to it by the sessions, or when they have decided on the fact without *any* evidence, or against evidence."

And as held in *R. v. Woolpit* (*supra*), that the sessions are like a jury; their finding on the facts is not to be disturbed excepting it be unsupported by the facts, or contrary to them; see also *R. v. Perkins*, 14 Q. B. 229; see *R. v. Sutton Coldfield*, *ante*, p. 518, and other cases *supra*.

It was held in *Cornwell v. Sanders*, 32 L. J. M. C. 6 (Wightman, *dis.*), that the court would not review the decision of the justices or the weight and value of the evidence, even although set forth in the case for the purpose of being considered by the court; and even although the decision of the justices was wrong.

Although the sessions are after the transmission of the special case to the superior court *functi officio* (*R. v. Staffordshire*, 7 E. & B. 935; 26 L. J. M. C. 179) in reference to it, the High Court may, as formerly, remit it to be more perfectly stated, as in *R. v. Winwick*, 8 T. R. 455; *R. v. Road*, 1 B. & Ad. 362. This may be done either by consent or by the authority of the court: *R. v. Nether Heyford*, Burr. S. C. 479; *R. v. Winwick* (*supra*). It may be that the sessions have not found some particular fact to which the evidence points: *R. v. Hitcham*, Burr. S. C. 489; or there may be some ambiguity in, or omission of a circumstance which may be supplied by the justices without hearing further evidence: *R. v. Bray*, Burr. S. C. 684; or there may be an inference that the sessions acted on the ground of fraud, without their actually finding fraud: *R. v. Llanfihangel Abercromin*, 4 N. & M. 355; see Nolan, 4th ed., p. 606; *R. v. Hineley*, Burr. S. C. 115.

Remitting
S. C. to
Q. S. for
amend-
ment.

Where necessary, the court will give special directions in the rule under which the order is remitted, commanding the sessions to inquire into and state particular facts: *R. v. Clifton-on-Dunsmore*, Burr. S. C. 697; *R. v. Maryam*, 1 T. R. 775; *R. v. Hogg*, Cald. 266; and whether the sessions are to hear new evidence is a question that must depend upon the nature of the case: see *Page's case*, 2 Bott. pl. 992; and, if the case be remitted to hear some particular evidence, the admission of that may oblige them to receive other evidence, for the court may be composed of an entirely different body of magistrates from those who heard the case originally: *R. v. Bray*, Burr. S. C. 682; *Page's ca. cited*, *ib.* 685. The sending a case back to be restated, is like ordering a new trial: *R. v. Blocham*, 1 A. & E. 386.

Where an order of justices has been quashed on appeal at sessions, and on a special case granted, the court send it back to be restated, the respondents are the proper parties to take steps towards procuring such restatement: *R. v. Barnes*, 11 L. J. M. C. 128; 2 G. & D. 233.

When the appeal is reheard, and the sessions come to an opposite decision to their former one on which the case was granted, the party complaining of it is the one to bring up the case. If the decision remains the same, no difficulty arises. So on an appeal against a conviction; the sessions confirmed the conviction granting a special case. On the case being remitted, the sessions reversed their former decision, and quashed the conviction on the rehearing. Under those circumstances if the respondent did not bring up the original case on the new finding, there would be an end of the appeal, and the conviction. See *R. v. Blocham*, 1 A. & E. 386.

By 12 & 13 Viet. c. 45, s. 11 (Baines' Act), at any time after notice of appeal to any court of quarter sessions against any judgment, order, rate, or other matter (except an order in bastardy, or relating to Her Majesty's revenue of excise, &c.), for which the remedy is by such appeal, the parties may, by consent and by order of any judge of one of the superior courts of common law (now the Queen's Bench Division), state the facts of the case in the form of a special case for the opinion of such court, and agree that a judgment in conformity with the decision of such court, and for such costs as such court shall adjudge, may be entered by motion by either party, at the sessions next, or next but one after such decision shall have been given; and such judgment

Additional evidence on hearing remitted S. C.

Practice on the re-hearing and S. C. remitted.

Case may be stated by consent or leave of a judge on notice of appeal.

shall be entered accordingly, and be of the same effect in all respects, as if the same had been given by the court of general or quarter sessions upon an appeal duly entered and continued.

Case
under
Jervis's
Act, from
justices.

By Jervis's Act, 20 & 21 Vict. c. 43, s. 2, "after the hearing and determination by a justice or justices of the peace *of any information or complaint* which he or they have power to *determine in a summary way, by any law now in force*, or hereafter to be made, *either party to the proceeding* before the said justice or justices may, *if dissatisfied with the said determination as being erroneous in point of law, apply in writing within three days* after the same to the said justice or justices, to *state and sign a case setting forth the facts and the grounds of such determination*, for the opinion thereon of one of the superior courts of law to be named by the party applying; and such party, hereinafter called 'the appellant,' shall, within three days after receiving such case, transmit the same to the court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceeding in which the determination was given, hereinafter called 'the respondent (a).'"

Recogni-
zance, &c.

By 20 & 21 Vict. c. 43, s. 3, "the appellant, at the time of making such application, and before a case shall be stated and delivered to him by the justice or justices, shall in every instance *enter into a recognizance*, before such justice or justices, or any one or more of them, or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice or justices shall seem meet, *conditioned to prosecute without delay such appeal*, and to submit to the judgment of the superior court, and *pay such costs as may be awarded by the same*; and the appellant shall at the same time, and before he shall be entitled to have the case delivered to him, pay to the clerk to the said justice or justices his fees for and in respect of the case and recognizances, and any other fees to which such clerk shall be entitled, which fees, except such as are already provided for by law, shall be according to the schedule to this Act annexed marked (A.), until the same shall be ascertained, appointed, and regulated in the manner prescribed by the statute 11 & 12 Vict. c. 43, s. 30; and the appellant, if then in custody, shall be liberated upon the

(a) These requirements are conditions precedent: *Morgan v. Edwards*, 5 H. & N. 415; 29 L.

J. M. C. 108; *Woodhouse v. Wood*, 29 L. J. M. C. 149.

recognizance being further conditioned for his appearance before the same justice or justices, or, if that is impracticable, before some other justice or justices exercising the same jurisdiction who shall be then sitting, within ten days after the judgment of the superior court shall have been given, to abide such judgment, unless the determination appealed against be reversed."

By 20 & 21 Vict. c. 43, s. 4, "if the justice or justices be of opinion that the application *is merely frivolous*, but not otherwise, he or they may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal; provided that the justice or justices shall not refuse to state a case where application for that purpose is made to them *by or under the direction of Her Majesty's Attorney-General for England or Ireland*, as the case may be." Refusal of frivolous application for case.

A case may be stated as well on a dismissal of a summons, as on a conviction: *Davys v. Douglas*, 28 L. J. M. C. 193; 4 H. & N. 183. Case on dismissal of summons.

By 20 & 21 Vict. c. 43, s. 5, should the justices refuse to state a case, application may be made to the Court of Queen's Bench on an affidavit of the facts, for a rule calling on the justices and the respondent to show cause why a case should not be stated. And the costs of such rule will be at the discretion of the court. Queen's Bench may order case.

It was held in *Ex p. Longbottom*, 45 L. J. M. C. 163, that the Court of Queen's Bench, and not a divisional court, was the proper court in which to apply for the mandamus under the above section, as "it was not an appeal within the 45th sec. of the Judicature Act, 1875 (36 & 37 Vict. c. 66);" and that "that division has jurisdiction over all matters which were formerly within the exclusive jurisdiction of the Court of Queen's Bench;"—*per curiam*, Blackburn, Quain, and Field, JJ. See cases *ante*, pp. 519—520. Jurisdiction of Queen's Bench on Crown side."

The following are the rules made under Jervis's Act, 20 & 21 Vict. c. 43, as to cases stated under that Act.

By *R. G. Mich. Term*, 1857, *r. 1*, in cases of appeal to a superior court, the 15th and 16th *Practice Rules, Hil. Term*, 1853, so far as the same are applicable, are to be observed. Rules of Court.

By *r. 2*, when an appeal is to be heard before a judge at chambers, the appellant shall obtain an appointment for such hearing, and shall forthwith give notice thereof to the respondent, and shall, four clear days before the day appointed for the hearing, deliver at the judge's chambers a copy of the appeal.

By *R. G. Hil. Term*, 1853, *r.* 15, 1 E. & B. iv., no motion or rule for a *concilium* is required, but special cases are to be set down for argument in the special paper, at the request of either party, four clear days before the day on which the same are to be argued, and notice thereof shall be given forthwith by such party to the opposite party.

By *R. G. Hil. Term*, 1853, *r.* 16, 1 E. & B. iv., four clear days before the day appointed for argument, "the plaintiff" (*i. e.* the person bringing up the case) must deliver copies of the special case with the points intended to be insisted on to the chief and senior puisne judge, and the other side to the two other judges; and in default by either party the other may, on the day following deliver such copies, and the party making default shall not be heard until he has paid for them, or deposited with the master a sufficient sum to pay them. If the statement of the points has not been exchanged between the parties, each party is, in addition to the two copies left by him, to deliver his statement of the points to the other two judges, either by marking them in the margin of the books delivered, or on separate papers.

Rules 15 & 16 H. T., 1853, are to the effect that appeals may be set down for argument, at the request of either party, four clear days before the day of argument, notice being given forthwith to the opposite party, and the appeal cases, with points of argument, being delivered to the judges, see *Glen's Ed. of Jervis's Acts*, p. 237—8.

Costs where
case not
lodged.

Where, upon a case stated under 20 & 21 Vict. c. 43, the appellant has neglected to lodge the case within the specified time (*sec.* 2), the court will grant the costs of a rule to show cause why it should not be struck out of the list. Mellor, J., remarked, that the ordinary rule was that parties who compel litigation must put themselves in the right, and that the appellants should be compelled to pay the costs incurred by improperly setting the law in motion (*a*). The decision in *Brown v. Shaw*, L. R. 1 Ex. D. 425, not followed: *The G. N. & N. W. Committee v. Inett*, 46 L. J. M. C. 237; 2 Q. B. D. 284; 25 W. R. 584.

In England.

In Ireland.

It has, however, been decided in Ireland that where the effect of the order is that an appeal is not properly before the court, costs cannot be given against the appellant: *Little v.*

(*a*) When a person brings himself before the court he impliedly submits himself to its jurisdiction

as to costs: *Peters v. Sheeham*, 1 M. & W. 213; 12 L. J. Ex. 177.

Donnelly, 5 Ir. R. C. L. 1 Q. B. This does not appear to be the practice in the English courts.

Application for the costs incurred in the court below should be made at the time of the rule: see *Cooke v. Montague*, 28 L. T. R. 494; 21 W. R. 670, Q. B.; and Glen's *Jervis's Acts*. Application for costs.

SUMMARY JURISDICTION ACTS.

The Summary Jurisdiction Act, 1879, is to be construed as one with the Summary Jurisdiction Act, 1848 (commonly known as "Jervis's Act"), 11 & 12 Vict. c. 43, which was passed "to conduce to the improvement of the administration of justice within England and Wales, so far as respects *summary convictions and orders* to be made by Her Majesty's justices of the peace therein," and to consolidate the statutes relating thereto. Act 1848 and Act 1879 as one Act.

Whatever there was formerly, there is now but little distinction between convictions and orders as regards summary convictions. Tindal, C.J., in *Burgess v. Boetefour*, 13 L. J. M. C. 126 (1844), said, "the word 'conviction' is *verbum equivolum*;"—and Cresswell, J., designated it as "ambiguous." Since Jervis's Act in 1848, convictions and orders have been placed on almost the same footing. Paley says, "it is not easy to fix any rule for distinguishing in the abstract between what things are subject to *orders*, and what to *convictions*. Practice seems chiefly to have been consulted in the distinction."—Paley on Convictions, 7th Ed., 171. Convictions and orders—no substantial distinction.

The distinction lies in this: the conviction is the record of a summary proceeding upon a penal statute before one or more justices, where the offender has been convicted and sentenced. Prior to 4 Geo. 2, c. 26 (1731)—reciting that, "many and great mischiefs do frequently happen to the subjects of this kingdom from the proceedings in courts of practice being in an unknown language;" (a)—convictions were then recorded in Latin, and orders returned in English. Formerly, an order was drawn up before it was acted on; a conviction might be drawn up at any time after the justices had pronounced Distinction between convictions and orders.

(a) See form of an order in Latin, *Northtush, Rex v. Benjamin Nelson*, n. (C), *R. v. Sweet*,

9 East. 27. "Sanctæ Trinitatis, Anno 21^o Car. 2di, Regis."

their decision: see *R. v. Radnorshire*, 9 Dowl. P. C. 93; the "conviction" is an entire judgment and indivisible, and one material fault may vitiate the whole; but an "order" may be good in part and bad as to the residue: *R. v. Green and others*, 20 L. J. M. C. 168; *R. v. Robinson*, 17 Q. B. 466, 471; *R. v. Sprout*, 9 East, 25; *R. v. Price*, 6 T. R. 147 (a).

The following are some instances of material omissions in the legal statement of the essence of an offence which will vitiate a conviction:—

Material
verbal
allegations.

The omission of "wilfully and knowingly" in a conviction under 11 Geo. 2, c. 19, s. 4, of a tenant for fraudulently and clandestinely removing goods, *R. v. Radnorshire*, 9 Dowl. P. C. 90; further, as to introducing the word "wilfully," see *R. v. Badger*, 25 L. J. M. C. 81; *Carpenter v. Mason*, 12 A. & E. 629; *R. v. Bent*, 1 Den. C. C. 159 (reported by Williams, J.); *Hudson v. M'Rae*, 33 L. J. M. C. 65; "wilfully and corruptly" (in perjury), *R. v. Stevens*, 5 B. & C. 246; "wilfully and maliciously," *Charter v. Graeme*, 13 Q. B. 226; "maliciously," *Stevenson v. Newlan*, 13 C. B. 285; *R. v. Pembleton*, L. R. 2 C. C. R. 119; 43 L. J. M. C. 91; *R. v. Ward*, L. R. 1 C. C. R. 356; 41 L. J. M. C. 69. The averment of "knowledge" is essential although not made necessary by statute; see *Chaney v. Payne*, 1 Q. B. 712, 721; *Fletcher v. Calthrop*, 6 Q. B. 880, 887, in which Lord Denman, C. J., remarks on Littledale's, J., judgment in *R. v. Marsh*, 2 B. & C. 717; and explains *James v. Phelps*, 11 A. & E. 483. See *post*, p. 539.

The omission of "unlawfully" will form no objection unless distinctly used in the statute; so held in *R. v. Chipp*, 2 Str. 711.

Technical
words un-
necessary
in informa-
tions.

Technical words are unnecessary in informations. "It is sufficient," said Lord Holt, "for the justices in the description of the offence in the information to preserve the words of the statute: all that is necessary is to show such a fact as is within the description of the statute, and to describe it as the statute wills." See *R. v. Chandler*, 1 Lord Raym. 581, 583; see also *R. v. Marsh*, 2 B. & C. 717 (*sed vide sup.*); *In re Boothroyd*, 15 M. & W. 1.

As to what are *essential* provisions in statutes, and those which are *directory* only, see cases collected in note to *Chaddock v. Wilbraham*, 5 C. B. R. 654.

Application
of the Acts.

By sec. 1, 11 & 12 Vict. c. 43 (Jervis's Act, 1848), the summary jurisdiction of the justice applies to all cases

(a) See note (a), p. 537, *infra*.

where *an information* shall be *laid* that any person has committed an offence within the jurisdiction of the justice for which he is liable to punishment on a summary conviction; and also in all cases where a *complaint* shall be *made* to any justice upon which he may have authority to make an order for the payment of money or otherwise. But sec. 35 of the same Act *excepts* from this jurisdiction, Exceptions under the 35th section. warrants or orders for the removal of poor persons, or orders in respect to lunatics, or in matters of bastardy (*a*), *save only* as to such provisions as relate to the backing of warrants compelling the appearance of the putative father, or warrants of distress, or levying sums ordered to be paid, or the imprisonment of a defendant for non-payment of the same (see sec. 54, Summary Jurisdiction Act, 1879); nor will the Act extend to any proceedings relating to the labour of children and young persons in mills and factories (*b*).

By sec. 52 of the Summary Jurisdiction Act, 1879, the provisions in the Act to impose imprisonment without hard labour, and reduce the prescribed period thereof, or do either of such acts, and in the case of a fine, if it be imposed in respect of a *first* offence, to reduce the prescribed amount, and in case of imprisonment, to impose a fine in lieu thereof, will not apply to proceedings in relation to the regular or auxiliary forces. Exceptions as to the army, navy, marine, or militia, Acts.

The 53rd sec. brings proceedings before the court of summary jurisdiction in reference to informations relating to the Post-office (*c*) statutes under the Summary Jurisdiction Acts, where the sum to be forfeited does not exceed £20; otherwise the proceedings will be in force under the special Act. Limited application of the Act to Post-Office and revenue cases in summary proceedings.

So also with regard to proceedings in excise and revenue cases, the Acts will apply so far as regards the proceedings in the court of summary jurisdiction, but extending the power of imprisonment to six months where the penalty imposed exceeds £50.

Excepting so far as sees. 52 & 53 bring Post Office and

(*a*) See remarks of Field, J., in *R. v. Montgomeryshire*, 51 L. J. M. C. 95, where he speaks of the doubt as to a bastardy order being a conviction or order; and hence sec. 54 in the Sum. Juris. Act, 1879: *post*, p. 547.

(*b*) The part of section 1 excluding proceedings relating to

her Majesty's revenue of excise, or customs, stamps, taxes or post-office is repealed by the Sum. Juris. Act, 1879, sch. 2.

(*c*) An appeal to the Quarter Sessions by the convicted person is under sec. 13 of 7 Will. 4 & 1 Vict. c. 36.

Inland Revenue cases within the summary jurisdiction of the justices, those Acts will not further apply to cases affecting the interest of the Crown ; and therefore, it would seem that the appellant clauses of the Act of 1879 will not operate on them ; but any appeals to the quarter sessions which may be made therein will be entirely governed by the provisions in the special Acts under which the convictions appealed on may be made (*a*). See *Leith Harb. Com. v. Inspectors of Poor*, 1 H. L. Sc. App. 17.

Summary cases heard only in open court.

A case arising under any Summary Jurisdiction Act is only to be heard and determined by a court of summary jurisdiction sitting in open court at a petty sessional court-house, or where the justices are accustomed to assemble, and will consist of two or more justices ; sec. 20, S. J. A. 1879.

The clerk to the court of summary jurisdiction.

The clerk to the court will be the salaried clerk to a petty sessional division under section 5 of the Justices Clerks' Act 1877, or his deputy, sec. 48, S. J. A. 1879 (*b*).

For the general provisions as to the jurisdiction of the courts of summary jurisdiction, see sec. 46, S. J. A. 1879. As to the local jurisdiction in indictable offences, sec. 45 *ib*.

Fine, or imprisonment.

Under several statutes prior to 1879 the justices had no option but to imprison a defendant, and could not impose a fine, and many hardships in consequence took place. But now, under sec. 4 of the S. J. A. 1879, a court of summary jurisdiction has authority under any Act to impose either imprisonment or fine, and the imprisonment may be with or without hard labour ; and the court may reduce the prescribed period, or do either of such acts ; and in case of a fine, if it be imposed in respect of a first offence, may reduce the prescribed amount. As to the exception of the regular and auxiliary forces, see *supra*.

Where a court of summary jurisdiction has authority under an Act of Parliament other than the Summary Jurisdiction Act, 1879, whether past or future, to impose imprisonment, and has no authority to impose a fine, the court may, if they think the case will be better met by a fine than by imprisonment, impose a fine not exceeding £25. and not being of such an amount as will subject the offender, under

(*a*) See *supra*, tit. "Excise," and the special provisions as to the hearing the appeal.

(*b*) As to clerks to justices of boroughs, see 5 & 6 Will 4, c. 76, s. 102 ; 24 & 25 Vict. c. 75, s. 5 ; *Brown v. Evans*, 33 L. T. 737,

affirmed, 35 L. T. 877 : 24 W. R. 937. It is necessary to observe who is the statutable clerk, as he will be the only person on whom to serve the notice for the justices under sec. 31, sub-sec. 2, Sum. Juris. Act, 1879.

the provisions of the Act, in default of payment, to a greater term of imprisonment than that to which he would be liable under the Act authorising the imprisonment, 1879, sec. 4.

The following is the *maximum* scale now fixed for imprisonment by sec. 5, Summary Jurisdiction Act, 1879 (under any Act), in respect of the non-payment of sums adjudged to be paid by a conviction, *or*, in respect of the *default of sufficient distress (a)* to satisfy any such sum :—

Scale of
punish-
ment.

Where the amount does not exceed ten shillings, the period of imprisonment shall not exceed	Seven days.
Exceeding ten shillings, but not exceeding one pound	Fourteen days.
Exceeding one pound, but not exceeding five pounds	One month.
Exceeding five pounds, but not twenty pounds	Two months.
Exceeding twenty pounds	Three months.

As regards convictions under the Post Office and Inland Revenue statutes, where the sum adjudged to be paid exceeds £50, the imprisonment on default may *exceed* three months, but not six months : Summary Jurisdiction Act, 1879, sec. 53.

It will be seen that under section 31, Summary Jurisdiction Act, 1879, sub-sec. 5 (where that section applies), the court of quarter sessions on hearing an appeal under the provisions of that Act, will have full power to make such order in the matter as the court may think just ; and may, in making such order, exercise any power which the court of summary jurisdiction might have exercised ; and, further, that such court of appeal “ may confirm, reverse, or modify, the decision of the court of summary jurisdiction ” (*b*).

Quarter
Sessions
on appeal
may alter
punish-
ment.

The court will not be astute in discovering defects in convictions. The old rule to that effect is exploded : see *R. v. Thompson*, 2 T. R. 18. In fact, everything is to be intended in support of an order of justices : *R. v. Farringdon*, 2 T. R.

Form of the
conviction.

(a) The order for distress is a condition precedent for imprisonment : *Ex parte Browne*, 3 Q. B. D. 545 ; 47 L. J. M. C. 108 ; 38 L. T. 682 ; 26 W. R. 694. See tit. “ *Alchouse*,” *ante*, p. 70.

(b) The requirement to enter into recognizances to keep the peace, or the observing of some other condition, may be dispensed with (sec. 4, Act 1879).

471; *R. v. Aire & Calder Navigation*, *ib.* 660; *R. v. Clayton*, 3 East, 58. Many older authorities establish the reverse proposition: *R. v. Little*, 1 Burr. 603; *R. v. Gordon*, 4 *ib.* 2281, S. P. *R. v. Peckham*, Camb. 439; *R. v. Chandler*, 1 Salk. 378.

On an information for keeping a betting-house on divers days and times, a conviction for keeping the house on a day not specified is good: *Onley v. Gee*, 30 L. J. M. C. 222.

A conviction following the words of the Act, "that one T. P., unlawfully by threats, endeavoured to force one M. J., to depart from his hiring to Messrs. P. & Co.," was held to be sufficient, and that the nature of the threats need not be shown: *Ex p. Perham*, 29 L. J. M. C. 33; 5 H. & N. 30.

Where the same statute provides summary proceedings in distinct sections for various offences, it must appear on which section the conviction has been made: *Charter v. Graeme*, 13 Q. B. 216; 18 L. J. M. C. 73; 13 J. P. 232.

Where a form is given in the Act it is sufficient to follow it in describing the offence: *R. v. Johnson*, 8 Q. B. 102; *Barnes v. White*, 1 C. B. 192; 14 L. J. M. C. 65.

The offence must, however, be correctly stated: *Ex p. Hawkins*, 2 B. & C. 31; and be the one contemplated by the Act: *Ex p. Pain*, 5 B. & C. 251.

Distribu-
tion of the
penalty.

In some instances the justices have to exercise a discretion as to how the penalty shall be distributed; they must then show on the face of the conviction that they have done so; but where they have no discretion vested in them it is sufficient if the conviction state the penalty is to go as the law directs: *In re Boothroyd*, 15 M. & W. 1; 15 L. J. M. C. 57; *R. v. Hyde*, 21 L. J. M. C. 94; Ell. & Bl. 859; 16 J. P. 67, overruling *Ex p. Hyde*, 15 Jur. 803; see also *R. v. Barton*, 18 L. J. M. C. 56; 13 J. P. 120, decided under 29 Car. 2, c. 7; see also the cases, *supra*: *R. v. Johnson*, and *Barnes v. White*, where the informer's name, to whom the penalty was to go, was in no way named. See also *Wray v. Toke*, 12 Q. B. 492, decided under 11 Geo. 4 and 1 Will. 4, c. 64, and 4 & 5 Will. 4, c. 85 (Licensing Acts).

Where the payment is directed to be made to a person other than the one entitled to receive it, the conviction will be bad. As where on a conviction for an assault under 9 Geo. 4, c. 31, the fine was required to be paid to the treasurer of the county, it was held to be bad: *Chaddock v. Wil-*

convictions *braham*, 5 C. B. 645; see also *R. v. Hyde*, *supra*.

The conviction must not be in the alternative: *Ex p.*

Pain, 5 B. & C. 251; *R. v. North*, 6 D. & R. 143; nor in blank, *R. v. Pain*, 4 D. & R. 72. not in the alternative.

A conviction charging three offences will be bad. Such a record would furnish no protection against another information: *Newman v. Bendyshe*, 10 A. & E. 11; see *Lockwood v. The Attorney-General*, 10 M. & W. 464; *Wray v. Toke* (*supra*). Particularity in convictions.

An error in the adjudication of the fact creating the offence, or the judgment thereon, will vitiate the conviction: *Griffiths v. Harries*, 2 M. & W. 335; 1 Jur. 57.

A conviction for being found "on the high seas" in a ship liable to forfeiture, and made by a justice at the first place on land to which the party was carried, was held good (6 Geo. 4, c. 108, s. 43): *In re Nuon*, 8 B. & C. 644. In that case the vessel was first boarded as she was entering the harbour of Harwich.

To convict the owner of a boat for plying for hire by his servants without being qualified, the conviction must state he received some of the hire: *R. v. Taylor*, 2 Chit. R. 578.

Where two persons are convicted of an assault they cannot be jointly fined: *Morgan v. Brown*, 6 Nev. & M. 67.

When an informal or improper conviction has been recorded at the sessions (and all convictions are matters of record, and are to be filed at the sessions with the clerk of the peace by the convicting justice: *R. v. Easton*, 2 T. R. 285; see also *Ex parte Hayward*, 32 L. J. M. C. 89), a second conviction, obviating any fault of the first, may be filed, provided nothing equivalent to a quashing the first has taken place: *Charter v. Grene*, 13 Q. B. 216; 19 L. J. M. C. 73. And even after the copy of the conviction has been given to the defendant, the record may be drawn up in a more formal shape, and be recorded as the only authentic proceeding; and at the trial in an action founded on it, and so on an appeal, the court will not inquire into the time when it was actually drawn up: see *R. v. Barker*, 1 East, 187; *Massey v. Johnson*, 12 *ib.* 82; *Gray v. Cookson*, 16 *ib.* 20; *R. v. Allen*, 15 *ib.* 333; *Charter v. Grene* (*supra*). But the conviction must not be passed on a different statute from that of the commitment: *Rogers v. Jones*, 1 R. & M. 129. Copy of record, evidence: *Giles v. Siney*, 11 L. T. 310. When informal convictions may be corrected. Filing convictions at sessions.

The 19th section of the Summary Jurisdiction Act, 1879, creates an appeal in these words: "Where in pursuance of any Act, *whether past or future*, any person is adjudged by a conviction or order of a court of summary jurisdiction, to be imprisoned without the option of paying a fine, either as a punishment for an offence or (save as hereinafter mentioned) Under Sum. Juris. Act, 1879, s. 19, an appeal in cases where sentence of

imprisonment without the option of paying a fine and appeal not hitherto authorised.
Exception.

for failing to do, or to abstain from doing any act or thing required to be done, or left undone, *and such person is not otherwise authorised to appeal* to a court of general or quarter sessions, and did not plead guilty, or admit the truth of the information or complaint, he may, notwithstanding anything in the said Act, appeal to a court of general or quarter sessions against such conviction or order."

But this section will *not* apply where the imprisonment is adjudged for failure to comply with an order for the payment of money, for the finding of sureties, for the entering into any recognizance, or for the giving of any security.

It will be important to notice, when considering sections 31 & 32, the cases which are *excluded* under "past" Acts from sec. 19, where a right of appeal had *already* been given against a conviction by such "past" Acts: see *post*, p. 546, *R. v. Salop or Shropshire*, and remarks thereon; as also *R. v. Montgomeryshire, post*.

Section 31, Act, 1879. The following is the "amendment of procedure" on appeal under the 31st section, Summary Jurisdiction Act, 1879:—

Where any person is authorised by *this* Act or by any *future* Act to appeal from the conviction or order of a court of *summary* jurisdiction (*a*) to a court of general or quarter sessions, he may appeal to such, subject to the conditions and regulations following:—

Rules and regulations of sec. 31.

1. The appeal shall be made to the prescribed court of general or quarter sessions, or if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county, borough, or place for which the said *court of summary jurisdiction* acted, and holden not less than *fifteen* days after the day on which the decision was given upon which the conviction or order was founded; and

2. The appellant shall, within the prescribed time, or if no time is prescribed within seven days after the day on which the said decision of the court was given, give notice of appeal by serving on the other party, and on *the clerk of the said court* of summary jurisdiction, notice in writing of his intention to appeal, and of the general grounds of such appeal; and

3. The appellant shall, within the prescribed time, or if no time is prescribed, within three days after the day on

(a) *R. v. Price*, 49 L. J. M. C. 5 Q. B. D. 300. A justice sitting to issue a warrant of distress to

recover a poor rate is not of summary jurisdiction.

which he gave notice of appeal, enter into a recognizance before a court of summary jurisdiction, with or without a surety or sureties, as that court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the court of appeal thereon, and to pay such costs as may be awarded by the court of appeal; or the appellant may, if the court of summary jurisdiction before whom the appellant appears, think it expedient, instead of entering into a recognizance, give such other security, by deposit of money with the clerk of the court of summary jurisdiction or otherwise, as the court may deem sufficient; and

4. Where the appellant is in custody, the court of summary jurisdiction before whom the appellant appears to enter into a recognizance may, if the court think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody; and

5. The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction or remit the matter, with the opinion of the court of appeal thereon, to a court of summary jurisdiction acting for the same county, borough, or place as the court by whom the conviction or order appealed against was made, or may make such other order in the matter as the court of appeal may think just, and may by such order exercise any power which the court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the court of summary jurisdiction. The court of appeal may also make such order as to costs to be paid by either party as the court may think just; and

6. Whenever a decision is not confirmed by the court of appeal, the clerk of the peace shall send to the clerk of the court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also indorse on the conviction or order appealed against, a memorandum of the decision of the court of appeal, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order; and

7. Every notice in writing required by this section to be given by an appellant shall be in writing signed by him or by

his agent on his behalf, and may be transmitted as a registered letter by post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.

Limit of
S. J. Act,
1879, s.
31.

Effect of
s. 19.

The 31st section above set out is in terms specifically confined in its operation to appeals by "any person authorised by *this* Act, or by any *future* Act."

Sec. 19, it will have been noticed, created a *new* class of appeal (applicable to *past* Acts), and giving an appeal in *all* cases where a person is convicted and sentenced to imprisonment without the option of paying a fine; and the Act under which the conviction might be made had given him *no right* of appeal. When such an appeal is made, the "rules and regulations" of sec. 31 will have to be observed, as the appeal would then become one under "*this*" (1879) Act. Where the former Act gives a right of appeal, then the appellant will have the right of option to appeal under the *past* Act, or the Act of 1879, as provided for by sec. 32. See *R. v. Salop*, *S. C. R. v. Shropshire*, *post*; and in *R. v. Montgomeryshire* (*post*).

Optional
appeal
under sec.
32, S. J.
Act, 1879.

By sec. 32, Act 1879, it is enacted, where a person is authorised by any *past* Act to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, he *may* appeal to such court, *subject to* the conditions and regulations contained in *this* Act with respect to an appeal to a court of general or quarter sessions:—

Provided that where any such appeal is in accordance with the conditions and regulations prescribed by *the Act authorising* the appeal, so far as the same is unrepealed, such appeal shall *not be deemed invalid* by reason only that it is not *in accordance with* the conditions and regulations contained in *this* Act (*a*).

(*a*) The 32nd section also provides that where *any past* Act, so far as unrepealed, prescribes that *any* appeal from the conviction or order of a court of *summary jurisdiction* shall be made to the *next court* of general or quarter sessions, such appeal *may* be made to the *next practicable* court of general or quarter sessions having jurisdiction in the county, borough, or place for which the court of summary jurisdiction acted, and held not less than

fifteen days after the day on which the decision was given upon which the conviction or order appealed against was founded. We may notice the distinction in the wording of this portion of the clause. The application is *general*, applying to "*any past Act*," whereas the prior portion of the section is expressed in strictly limiting words, giving an entire option in the appellant to proceed under the conditions and regulations as they

In some few of the "past Acts" the Act gives merely a bare or general right of appeal without enacting any specific conditions or regulations to be observed for the appeal. In some the entering into a recognizance is required either as a security for costs, or, in fact, as an actual condition precedent to the appeal; as in the appeal against an order of affiliation where the entering into the recognizance is a condition for the appeal, and of which notice is to be given to the mother of the child.

For the purpose of creating a uniformity of practice in certain cases of appeal, Baines' Act, 12 & 13 Vict. c. 45, was passed; but, by sec. 2 of that Act, appeals against convictions (*inter alia*) are excluded from the operation of the Act (a).

It had been formerly held that with a bare right of appeal the entering into a recognizance was tantamount to a notice of appeal: see *R. v. Kent*, 6 M. & S. 258; *R. v. Essex*, 4 B. & Ald. 276, those being cases where the only condition attached to the appeal was that a recognizance should be entered into by the appellant.

But those cases, soon after the passing of Baines' Act, came under review in *Ex p. Blues*, 5 E. & B. 291; 24 L. J. M. C. 138; the court holding that where the Statute gave only a bare right of appeal, a reasonable notice of appeal was requisite as a condition attached in law to the appeal. And in reference to the giving the notice of appeal, Lord Campbell, C. J., said, "We are not called upon to express any opinion as to what notice of appeal is to be given under the circumstances; but we are not to be supposed as acquiescing in the rule laid down by Bailey, J., in *R. v. Essex*, that where an appeal is given without mentioning a notice of appeal, there is no occasion to give any notice of appeal to the opposite party; the learned judge does not lay down such an universal rule. He supposed that no further notice of the appeal could be required than the recognizance, as the opposite party might easily obtain information of that fact. But," said Lord Campbell, "when there is simply a power of appeal given, without any condition in the Statute, I am of opinion that it is necessary there should be notice of appeal given to the other side. Where the appeal is given generally without any condition, there is an implied condition

exist of either the "past" or the "present" Act. *shire, post.* and *R. v. Montgomery-shire, post.*

(a) See *R. v. Salop or Shrop.*

that notice of appeal shall be given to the other side, so that both parties may be heard and justice done." In these remarks Coleridge, J., concurred.

Since *Ex p. Blues*, in all cases where the bare right of appeal is alone given, notice of appeal has been required; but the *reasonableness* of such notice has been for the sessions to determine; and such was the universal practice prior to 1879.

Since the passing the S. J. Act of 1879, cases have been decided which should be carefully considered; and in reference to which the decision in *Ex p. Blues* has an important bearing.

R. v. Salop, or Shropshire.

R. v. Salop, 50 L. J. M. C. 72; S. C. *eo nom.* *R. v. Shropshire*, 6 Q. B. D., p. 669, was the first case brought before the Q. B. D. under the new Act of 1879. In that case application was made for a mandamus to justices to hear an appeal, on a conviction made under 11 Geo. 2, c. 19, of a tenant for having unlawfully and fraudulently removed his goods to avoid a distress for rent.

The 5th sec. of 11 Geo. 2, c. 19, gave the *bare or general right* of appeal, making no provision for any notice of appeal; and the 6th sec. provided for the stay of execution on the appellant entering into his recognizance in double the sum ordered to be paid—that recognizance, Grove, J., said, was no condition attached to the appeal; it was a mere stay of proceedings pending an appeal on a security for costs (*a*).

It was stated in the case that the appellant had given his notice of appeal in compliance with the requirements of Baines' Act, 12 & 13 Vict. c. 45 (which did not apply), and the recognizances had been duly entered into to try the appeal. The sessions declined to hear the appeal, on the ground that notice of appeal had not been given within

(*a*) There are, however, instances under similar statutes, where the entering into the recognizance would be a *condition* attached to the right of appeal: see *R. v. Oxfordshire*, 1 M. & S. 446; *R. v. Lincolnshire*, 3 B. & C. 548. And in such cases it would seem that the ruling in *R. v. Salop* or *R. v. Shropshire* would not apply (excepting by election of the appellant), so there would at least be *one* "condition" attached to the appeal. In all cases falling within Baines' Act

(those on convictions being excluded by sec. 2 will not) that Act would apply; in other cases the ruling in *Ex parte Blues* (*supra*) would be equally applicable; and, as that authority was not considered or even noticed in *R. v. Salop*, it can hardly be taken as overruled; and seeing also that in *R. v. Salop* it was erroneously assumed that cases of convictions were within Baines' Act, and that that Act would so far be repealed,

the time specified in the Summary Jurisdiction Act, 1879, sec. 31.

It was urged on the part of the respondents that the object of the Act of 1879 was to give a uniform method of procedure in appeals; and its provisions were applicable to the present case, inasmuch as 11 Geo. 2, c. 19, laid down no "conditions or regulations,"—and that, on that ground, the sessions rightly declined to hear the appeal.

Grove, J., in giving judgment, said—"I think that contention is right. The order was made under 11 Geo. 2, c. 19; and under the 5th section an appeal from such order is given to the next general quarter sessions. *No conditions of any description are attached to the appeal.* Then comes the 6th section, which provides that where the party appealing shall enter into a recognizance as therein mentioned, execution shall be stayed pending the hearing of the appeal. In other words, the appellant must give security for costs in order to have execution stayed. The entering into a recognizance is not, however, any condition attached to the appeal; but such appeal is of right. Then comes 12 & 13 Vict. c. 45 (a), under which fourteen days' notice of appeal must be given in *all* cases.

"Such was the state of the law at the time of the passing of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), which deals with various matters, and which in the 31st section prescribes conditions and regulations which admittedly have not been complied with. These conditions, *if inconsistent with that contained in 12 & 13 Vict. c. 45, repeal the latter* in so far as they are inconsistent with them. Then comes the 32nd section, which is applicable to the present case, and which provides that 'where a person is authorised by any *past* Act to appeal from *the conviction or order* of a court of summary jurisdiction to a court of general or quarter sessions, he *may appeal* to such court subject to the conditions and regulations contained in this Act with respect to an appeal to a court of general or quarter sessions.' These conditions and regulations are contained in the 31st section, to which I have already alluded, and have not been observed by the appellant. But then there is a *proviso to the 32nd section*, upon the construction of which the present question turns. It runs thus: 'Provided that where any such appeal is in accordance with the conditions and regulations prescribed by the Act authorising the appeal, so far as the

(a) See note (a), *ante*, p. 546.

same is unrepealed, such appeal shall not be deemed invalid by reason only that it is not in accordance with the conditions and regulations contained in this Act.' Now this appeal cannot be said to be 'in accordance with the conditions and regulations prescribed by the Act *authorising* the appeal,' because the Act 11 Geo. 2, c. 19 attaches *no* condition; *therefore* the provisions of the Summary Jurisdiction Act, 1879, apply, and the appellant, not having given his notice of appeal in proper time, had *no locus standi* at the sessions. On these grounds I think the justices were quite right, and that, therefore, the rule must be discharged."

Lindley, J.: "I agree. Mr. Kemp's argument is gone if the words of the statute are carefully looked at. *Two classes of cases are dealt with—the one where a right of appeal is given simply, the other where certain conditions are attached to such right. This case comes within the former of the two classes. We are therefore thrown back on the provisions of the 31st section by force of the words contained in the 32nd section. When once this is done, it is admitted that the appellant cannot succeed. As to whether 12 & 13 Viet. c. 45 is repealed, I will only say that, so far as regards the present question, I can see no inconsistency between the two statutes. The one says that notice of appeal must be given within a certain time after the decision of the justices; the other, that such notice must be given fourteen days before the sessions at which the appeal is to be tried.*"

Remarks
on *R. v.*
Salop;

"*may*" or
"*shall*,"
sec. 32.

The decision in *R. v. Salop* put an important construction on sec. 32 of the Act 1879; but to support it, the permissive "*may*" in that section must be read as the imperative "*shall*," and thereby render the exclusive introductory words of sec. 31, limiting the appeal under that section to where any person is authorised by *this* Act, or by any *future* Act, to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, of no effect. The 11 Geo. 2, c. 19, gave a right of appeal; and, in the language of sec. 19, Act 1879, the 1879 Act is only to apply where such person (on conviction) is not otherwise *authorised* to appeal. The effect of sec. 19 on the construction of the Act was not noticed in the case. And, with all submission, the court had mis-conceived "the state of the law regulating appeals against convictions at the time of the passing the Summary Jurisdiction Act, 1879," in not referring to the then well-established rule of practice in such appeals, under the authority of *Ex parte Blues*; and in dwelling on Baines' Act, as apply-

ing to convictions, which was, in fact, absolutely excluded from the case by sec. 2 of that Act.

An appeal, under a statute giving a bare right of appeal, as under 11 Geo. 2, c. 19, would appear to be a *casus omissus* in applying any *statutable* "conditions and regulations" of appeal to it, as those under sec. 31 of the Act of 1879, unless the appellant should have *elected* to proceed under that section as authorised by sec. 32. Bearing in mind that sec. 19 preserved the appellant the right of appeal as under the then existing law, and excluded from it the Act of 1879, it is submitted that notwithstanding *R. v. Salop*, the rules of sessions were then *as law* under *Ex parte Blues*, and would still govern the practice. Had the sessions heard the appeal in *R. v. Salop*, as at the time brought before them, no successful application could have been made to the High Court to set their decision aside; not because the appellant had followed the directions in Baines' Act, but for the reason that, in the opinion of the sessions, the notices (as under *Ex parte Blues*) were "reasonable," and thereby were in compliance with the existing "conditions and regulations" at the time of the passing the Act of 1879.

The view here taken meets with some support from the decision in *R. v. Montgomeryshire*, 51 L. J. M. C. 95. That was an appeal against an order in bastardy, and which peculiar class of order Field, J., pointed out was in the nature of "half conviction" and "half order;" and there was a doubt whether such orders were included in the words "conviction or order" (a); and hence sec. 54, Act 1879, was inserted, making the Act applicable to the levying of sums adjudged to be paid under an order in bastardy; but the section did not make bastardy appeals differ from all others, and deprive them of the existing procedure.

Bowen, J., expressly observed on the distinction between "*may*" in sec. 32 as not to be interpreted as "*must*" (as it was, in fact, in *R. v. Salop*). And Field, J., remarked, "That it was not intended to deprive the appellant of any *previously existing advantage*. The conditions of the form of appeal, followed in this case, were as under 7 & 8 Viet. c. 101, s. 4; and 8 & 9 Viet. c. 10, s. 3, which are less onerous than those under sec. 31 of Act 1879."—"The Legislature," said

(a) These remarks indicate that Field, J., considered the Sum. Juris. Act where "order" was

mentioned meant an "order" in the nature of a "conviction."

Field, J., "meant to say, 'We will not alter *the existing rights* of appeal; the appellant may apply under the former Acts, or *this* Act, whichever he likes: he need not comply with the conditions of *this* Act;,' this is the right construction of secs. 31 and 32."

It has been observed that to uphold *R. v. Salop* (*supra*), "*may*" in sec. 32 must be read as "*shall*." It is clear from *R. v. Montgomeryshire* (*supra*), that "*may*" is to be read as permissive. A single word in a section cannot be read under two opposing interpretations to suit the convenience of the moment. *R. v. Salop* cannot, therefore, stand as law with *R. v. Montgomeryshire*.

Is sec. 31,
Act 1879,
applicable
to the
hearing of
an appeal
under a
past Act?

Upon the hearing of any such appeals, and generally as to appeals under the "past Acts," further points have to be considered as to the effect of the sub-secs. of sec. 31, which relate to the hearing the appeal. *R. v. Salop* and *R. v. Montgomeryshire* apply to the form and conditions of the notice of appeal; and the effect of the sub-sections applicable to the hearing and judgment on the appeal remains to be considered in the Court of Appeal on some future special case. It is, certainly, important that some clear judicial interpretation should be put, either by the High Court of Justice, or the Legislature, on these complicated enactments; the complications being entirely created by the uncertain and indefinite provisions of sec. 32, as to which if "*may*," in sec. 32, is to be read as "*shall*" as in *R. v. Salop*, and not as permissive, as in *R. v. Montgomeryshire*, the two sections would be rendered contrariant.

Election to
proceed on
sec. 32.

But the only consistent reading of sec. 32 seems to be, as in *R. v. Montgomeryshire*, to treat it as giving an optional appeal at the will of the appellant, and reserving all prior rights under the "past Act." *Primâ facie*, then, the appeal would be under the *past* Act, unless there be some distinct and special indication on the appellants' part that *he has elected* to proceed under the Act of 1879 in fact.

And even where he elects to proceed under the Act of 1879, still the prior Act must be looked to. Under sub-sec. 1, sec. 31, "*the prescribed court*" is to be selected for the appeal, and in some cases that court is the next practicable sessions; or a sessions to be holden after a certain number of days, or even months, from the time of the conviction. In some instances, then, the time will be less or may be more extended under the past Act for the appeal, than under the Act of 1879. The words of sub-sec. 1 are:—"The appeal (when acting under Act 1879) shall be

made to the *prescribed* court of general or quarter sessions, or if no court is prescribed, to the next practicable court," having jurisdiction, &c.

So with regard to the notice of appeal under the sub-sec. 2. The notice of appeal is to be given within the *prescribed time*, or if there be no prescribed time, within seven days after the day on which the decision of the court was given. Here, again, the "past Act" has to be looked to; and the time must be strictly followed for giving the notice of appeal, whether the party elect to proceed under the Act of 1879, or not.

As to the service "on the other party," there would be no distinction whether it be made under the past or present Act. It will be a personal service, or by leaving the notice at the party's residence.

But with regard to the service of the notice on the justices, or court of summary jurisdiction, there is a marked distinction. Under the sub-sec. 2, the service may be made on the clerk of the court. So also such may be the service on an appeal under some few of the *later* "past Acts," as the Weights and Measures Act, 1878, 41 & 42 Vict. c. 49, s. 60; the Factories and Workshops Act, 1878, 41 & 42 Vict. c. 16, s. 90. But under other Acts—as the Sale of Intoxicating Liquor Acts—a service on "the court of summary jurisdiction," where the appellant does not elect to proceed under the Act of 1879, there must still be a personal service on the justices; and a service on the clerk alone would be bad. See *Curtis v. Buss*, S. C. *eo nom. Ex parte Curtis* (*supra*, pp. 72, 133); *R. v. Yorkshire W. R.*, 7 Q. B. 154. See also *R. v. Bedfordshire*, 11 A. & E. 134; *R. v. Cheshire*, *ib.* 842.

So with regard to the entering into the recognizance on electing to proceed under the Act of 1879, the prescribed time under the "past Act" is to be observed; but if no such time is prescribed, then the time is limited to three days by sub-sec. 3. In some cases the recognizance is to be entered into *immediately*, as it is under the licensing Acts.

When proceeding on the "past Act," the recognizance is to be in some cases with two or no sureties. In each case where the "past Act" is proceeded under, the particular statute should be carefully referred to, and followed, as barely the regulations of any two statutes are similar.

Sub-s. 4, giving the justices power to release the appellant on entering into his recognizance, is a general power in all Acts.

The power given to the court of appeal under sub-s. 5 to

The notice of appeal.

Service on "the other party."

Service of the justices or Court of Summary Jurisdiction.

Entering into the recognizance.

Releasing the defendant on his recognizance.

Distinctions as to the hearing the appeal.

"confirm, reverse, or modify the decision of the court of summary jurisdiction," will be found to be important in its application. And especially so in considering whether the appeal has been made under the "past" or the "present Act."

Take for instance an appeal under the Act for the Prevention of Cruelty to Animals. Under the appeal clause of that Act the court of quarter sessions has no jurisdiction to alter the sentence passed at petty sessions; it can only confirm or dismiss the appeal. And, further, as to the costs;—under this "past" Act the court has no power to refuse granting the costs (see *R. v. Yorkshire W. R., In re Pearson*, 31 L. J. M. C. 271, and *infra*, tit. "Highways"); in both these instances the Act 1879, sec. 31, is to the contrary, and the court may alter the sentence, or it may in its discretion grant costs.

It is submitted that, carrying out the language of Field, J., "that existing rights of appeal" are not altered, we must read the "may" as reserving equally the "existing rights" of the respondent as well as those of the appellant. And if the appellant does not, in fact, *elect* to make his appeal under the Act 1879, but proceeds under the former or "past" Act, he does so for all purposes. But if he *elect* to proceed under the Act 1879, he "*may*" do so, and *then* be "subject to the conditions and regulations contained in" that Act.

Technical objections.

Technical objections having been so frequently fatal to appeals (*R. v. Salop* is only one instance out of the many), the draftsman of the Act 1879, probably seeing the confusion which might arise with respect to the notices of appeal under "past" Acts combined with sec. 31, Act 1879, inserted the provision, *ex abundanti cautela*, in sec. 32, "that where such appeal is in accordance with the conditions and regulations prescribed by the Act authorising the appeal, so far as the same is unrepealed, such appeal shall not be deemed invalid by reason only that it is not in accordance with the conditions and regulations of *this* Act."

This provision may be read as a protective clause on the construction to be put on the sub-ss. 1, 2, 3, sec. 31, as to the observance of the "prescribed" sessions to appeal to, and the "prescribed" times to be followed in giving the notices of appeal, or entering into the recognizances.

Sub-s. 6 may or may not become applicable according as the appellant may elect under which Act he will proceed. And a similar remark arises on sub-s. 7; but that sub-s. is merely expressive of the general practice.

Care in

The foregoing observations will at once show the necessity

of exercising great care in the selecting the statute under which to appeal and proceeding with the appeal. In some cases it might be to the advantage of the appellant *specially* to elect to proceed under the Act of 1879, as it may be, where he so elects, the court would have the power to modify the sentence imposed, which otherwise it might not; on the other hand, an extension of the time for appealing may be important which the appellant would have under the "past Act."

The mere fact of the appellant following the conditions and regulations of the Act 1879, or some of them, will not of necessity lead to the inference that he has in fact *elected* to proceed under that Act. In practice, where the administration of the law on appeals is so widely distributed for administration among the various courts of quarter sessions, and each court, within certain limits, having jurisdiction to exercise its own discretion, no decision there made can rest on a more uncertain basis than that of mere "inference." Unless, therefore, there be a fixed and certain reading of the Acts, with a fixed and certain general rule of practice, applicable to each class of appeal under the Acts, whether the appeal be under the election of the appellant or not, each appeal against a conviction will remain open to contentious argument, as well as variable and uncertain decisions; a result utterly at variance with that uniformity of proceeding so desirable to be attained, and the obtaining of which was apparently the object of the Legislature.

selecting
the
appellate
statute.

The Act
appealed
under not
to be left to
inference.

THEATRES.

Any person keeping a house, or place of public resort without being licensed, for the public performance of stage plays will, under 6 & 7 Viet. c. 68, s. 2, be liable to a penalty not exceeding £20 for every day on which the same may be so kept open without legal authority (*a*).

Sec. 23 defines the meaning of a stage play; and excludes from its operation any theatrical representation in a booth at any lawful fair, feast, or customary meeting.

A ballet is included in a stage play: *Wigan v. Strange*, 35 L. J. M. C. 31; so a dialogue, *Thorne v. Colson*, 3 L. T. 697; *Thorne v. St. Clair*, 25 J. P. 102; see also *Day v.*

(a) See the Sum. Juris. Act, 1879, s. 5.

Simpson, 34 L. J. M. C. 149; 18 C. B. N. S. 680, as to an exhibition known by the designation of "Pepper's Ghost."

A tent or booth used by strolling players is not a place of public resort within the meaning of sec. 2: *Davys v. Douglas*, 4 H. & N. 180; 28 L. J. Exch. 193; see also *Fredericks v. Howie*, 31 L. J. M. C. 248; 1 H. & C. 386; decided under the Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 46; the offence would there be committed by "keeping, using, or knowingly letting any house, or other tenement, for the purpose of being used as an unlicensed theatre," and it was held that a tent or booth was not the "tenement" as defined in Co. Litt. 20, a. See *R. v. Rosenthal*, 7 B. & S. 124; 35 L. J. M. C. 78; 13 L. T. 433.

6 & 7 Vict. It was, however, held in *Tarling v. Fredericks*, 28 L. T. c. 68, s. 11. 814; 21 W. R. 785; that a booth or show used for the acting a stage play may be "a place not being a patent theatre, or duly licensed as a theatre," and for the performance in which for hire a person may be liable to a penalty not exceeding £10 for every day on which he shall so offend: 6 & 7 Vict. c. 68, s. 11; see also *Fredericks v. Payne*, 32 L. J. M. C. 14; 1 H. & C. 584; 11 W. R. 36.

R. v. Strugnell. In *R. v. Strugnell*, L. R. 1 Q. B. 93; 35 L. J. M. C. 78; the appellants had hired of the overseers the Exchange Hall of the borough for six consecutive nights, but which was not duly licensed as a theatre. Stage plays were performed there, and the justices convicted the appellants as under sec. 2 for "having and keeping" an unlicensed theatre. The conviction was quashed as not being a case within sec. 2; but it was said to be within sec. 11. Lush, J., said: "The scheme of the Act is to maintain proper control over theatrical entertainments and the acting of stage plays; and it requires a licence for the place (sec. 7), and inflicts penalties both on the person having *permanent* control over the place (sec. 2), and allowing stage plays in it when unlicensed, and on every person who performs or causes (a) stage plays to be performed (sec. 11). Now in the present case the person convicted had not in any sense the permanent control of this building; but they performed or caused to be presented, stage plays in it. And when sec. 11 points at this latter class of persons I must suppose that the other section points at the other and different persons; viz., person having

(a) See *R. v. Glossop*, 4 B. & Ald. 616. The taking part in the rehearsals may be evidence, with

other acts may be good evidence, of "causing" the play to be performed.

the permanent control of the premises. . . . By sec. 7 (a) no licence is to be granted to any person except the actual and responsible manager, for the time being, of the theatre; the licence is to the *house* and not to the individual. And it could not be intended that a person who has no interest in the house beyond the performance during a few nights is to take out a licence for the house."

Sec. 15 prohibits the acting any play before it has been allowed by the Lord Chamberlain, or after it has been dis-allowed, under a penalty not exceeding £50, and the absolute forfeiture of any licence. Allowance of the performance of a play.

The 20th section gives to any person aggrieved by any order of a justice under the Act an appeal therefrom to the next (b) general or quarter sessions of the peace to be holden for the county, &c., whose order therein shall be final. This section gives the bare right of appeal, see therefore *R. v. Salop*, 50 L. J. M. C. 72, *infra*, under tit. "Summary Jurisdiction Acts" as to the form of appeal.

TIME.

By 43 & 44 Vict. c. 9, all time is now regulated by the Greenwich mean time. This overrules *Curtis v. March*, 28 L. J. Ex. 36, where it was held that "*time*" meant the mean time of the place.

Forthwith, immediately, instantly, directly, are equivalent to, —as soon after as can reasonably be expected, with promptitude, or reasonable promptness: see per Lord Coleridge, C. J., *Hudson v. Hill*, 43 L. J. C. P. 273, 277; per Coleridge, J., *R. v. Lowe*, 3 D. & L. 737; *Tennant v. Bell*, 9 Q. B. 684; *Spenceley v. Robinson*, 3 B. & E. 658; *Hyde v. Watts*, 12 M. & W. 254; *Grave v. Clinch*, 4 Q. B. 606; *R. v. Aston*, 19 L. J. M. C. 236; 4 N. Sess. Ca. 283; *Hancock v. Somes*, El. & El. 795; 28 L. J. M. C. 196; *R. v. Brownlow*, 11 A. & E. 127; *Duncan v. Topham*, 8 C. B. 225.

Where *no time* is expressly mentioned, the law allows a reasonable time: *Ellis v. Thompson*, 3 M. & W. 456; the reasonableness is a question of fact: *Startup v. Macdonald*, 2 M. & Gr. 395. And this may depend on the practice of

(a) As to a licence in Cam-bridge or Oxford, or within 14 miles thereof, see sec. 10, 6 & 7 Vict. c. 68.

(b) Next practicable sessions: Sum. Juris. Act, 1879, s. 32.

the Sessions : per Lord Denman, C. J., *R. v. Watts*, 7 A. & E. 470 ; see also *R. v. Surrey*, 5 B. & A. 539 ; 1 D. & R. 160 ; *R. v. Wiltshire*, 10 East, 404 ; *R. v. Yorkshire West Riding*, 5 B. & Ad. 671.

Ten days at least is ten *clear* days intervening : *Mitchell v. Foster*, 12 A. & E. 472 ; *R. v. Middlesex*, 14 L. J. M. C. 139 ; *R. v. Shropshire*, 8 A. & E. 173 ; 2 N. Sess. Ca. 73 ; *Chambers v. Smith*, 12 M. & W. 2 ; *Zouch v. Empsey*, 4 B. & Ald. 522 ; *Beard v. Gray*, 3 Chan. Chamb. R. 104 ; *R. v. The Aberdare Canal Co.*, 14 Q. B. 854.

Ten clear days are exclusive of the day of service and day of sessions : *R. v. Hertfordshire*, 3 B. & Ald. 581 ; *Roberts v. Stacey*, 13 East, 21.

Within ten days, the first day is exclusive, and the last day inclusive : *Freeman v. Reed*, 32 L. J. M. C. 226 ; 4 B. & S. 174 ; *Migotti v. Colville*, 4 C. P. D. 233 ; 40 L. T. 747 ; see also *Leslie v. Garland*, 15 Ves. 248 ; *R. v. Cumberland*, 4 N. & M. 378.

Sunday is usually included in calculating the time when the statute fixes the *doing* a thing, as the entering into a recognizance *within two days* (or the like) : *Ex parte Simkin*, 29 L. J. M. C. 23 ; 2 El. & B. 392, decided on 18 & 19 Vict. c. 121, s. 40 ; *Peacock v. Reg.*, 4 C. B. N. S. 264 ; 27 L. J. C. P. 224.

Sunday is reckoned in the days unless expressly excluded by the statute : *Ex parte Simkin* (*supra*) ; *Peacock v. Reg.*, (*supra*) ; *Woodhouse v. Woods*, 29 L. J. M. C. 149 ; *Great Northern Ry. Co. v. Inett*, 41 J. P. 294.

But Sunday is not to be reckoned in the 24 hours' notice of appeal required in a bastardy case : *R. v. Middlesex*, D. & L. 580 ; 3 N. S. C. 152 ; see also *Lister v. Garland*, 15 Ves. 247.

In the case last cited Erle, J., treated the service of the notice of appeal, which is a notice of what one court has decided, and which authorises another court to proceed, as very much in the nature of "process," and as strongly analogous to the service of a declaration in ejectment ; see also *R. v. Denbighshire J.J.*, 9 Dowl. P. C. 509. This view was subsequently upheld by Lord Campbell, C.J., in *Asprell v. Lancashire*, 16 Jur. Q. B. 1067, n., in which notice of grounds of appeal against an order of removal (the appeal having been entered at the July sessions) was put into the post on Saturday, October 2nd, and by ordinary course of post a letter posted from the appellant parish would reach the respondent parish *the same evening or early*

the following morning, and in fact the letter did reach the respondent overseers on the following morning, *Sunday, October 3rd*. The first day of the sessions was Monday, October the 18th. By 4 & 5 Will. 4, c. 76, s. 81, notice of appeal is to be given fourteen days at the least before the first day of the sessions at which the appeal is intended to be tried. On the objection being made that due notice had not been given, the sessions dismissed the appeal and the court refused to grant a mandamus, Lord Campbell, C. J., saying, "You cannot make out that the notice of appeal was delivered fourteen days at least before the first day of the sessions, without assuming the delivery of the notice on Sunday to be valid; but it has been held, that notice of appeal is 'process' (a) within sec. 6 of 29 Car. 2, c. 7, which prohibits service of process on a Sunday."

Sunday may in some instances be excluded from the time of giving notice of appeal; as where a rate is published on a Saturday, and time is requisite to consider whether an appeal shall be made against the rule or not: see *R. v. Essex*, 1 B. & A. 210; *R. v. Surrey*, 50 L. J. M. C. 10; 6 Q. B. D. 100, decided on a local act (*ante*, p. 126).

"After the cause of complaint" means from the time the person is actually damnified: *R. v. Devon*, 1 M. & S. 411; see *R. v. Shrewsbury (Recorder)*, 1 E. & B. 711, 720; 22 L. J. M. C. 98, overruling *R. v. Brixham*, 8 A. & E. 375; the making the order: *R. v. Salop*, 2 B. & Ad. 145; *R. v. Derbyshire*, 7 Q. B. 193; *R. v. Staffordshire*, 3 East, 157; the knowledge by other ratepayers of a claim of exemption, under 6 & 7 Vict. c. 36, s. 6, of a scientific society from rates: *R. v. Pocock*, 8 Q. B. 729; see *R. v. Devon*, 1 M. & S. 411; *R. v. Barnet Sanitary Authority*, 45 L. J. M. C. 105,

(a) Leeming and Cross, p. 275, have the following remarks on *Asprell v. Lancashire*:—"There appears some confusion in the report of this case between notice of appeal and grounds of appeal. Notice of appeal had been served in time, the only question was, whether *grounds* of appeal under 4 & 5 Will. 4, c. 76, s. 81, which in the ordinary course of post reached the overseer on Sunday the 3rd, were served in sufficient time within the Act requiring service fourteen days 'at least' before the sessions, which began

on the 18th of the month. In the report the grounds of appeal are spoken of as '*notice of grounds of appeal*,' from which perhaps the confusion may arise. But as *notice* of appeal is in the nature of process, *R. v. Middlesex JJ.*, 5 D. & L. 430, the decision would apply, though it went upon *grounds* of appeal." See as to the similar case of notice of dishonour of bills of exchange: *Hilton v. Fairclough*, 2 Camb. 633; *Stacken v. Collin*, 7 M. & W. 515; *Woodcock v. Houldsworth*, 16 M. & W. 124.

where it was held there was no distinction between "cause of appeal" and "cause of complaint."

Week, under the Factories and Workmen Act, 1878, means, the period between midnight on Saturday and midnight on the succeeding Saturday.

Month, by Lord Brougham's Act, 13 & 14 Vict. c. 21, s. 4 (in all Acts passed after June 10th, 1850), "month" is to mean calendar month unless words be added to show that lunar month to be intended.

"To any quarter sessions to be holden *within* six months," the appeal must be *within* that time; though if the two sessions are held *during* that time he, the appellant, may choose either of them: *R. v. Yorkshire West Riding*, 3 T. R. 779.

"*Within* three calendar months *next after* such conviction," Pilot Act, 52 Geo. 3, c. 39. The party has three months to signify his intention of appealing: *R. v. Middlesex JJ.*, 6 M. & S. 279. Under the General Inclosure Act, 8 & 9 Vict. c. 118, s. 63: *R. v. Essex*, 34 L. J. M. C. 41.

"Next possible," "next practicable," give the parties a reasonable time to look about them to consider whether they will appeal. And in this the distance of the appellant's place from that where the sessions are holden will be considered: *R. v. Yorkshire*, E. R. 1 Doug. 183; *R. v. Flintshire*, 7 T. R. 200; *R. v. Essex*, 1 B. & A. 210; the sessions must be practicable for all purposes, *R. v. Surrey*, 2 New Sess. Ca. 155; *R. v. Surrey*, *ante*, p. 126.

"Time" must not be abridged by the act of the "removing party," or the parties making a rate; where that is done the most favourable construction will be adopted as regards the other in giving notice of appeal: Lord Ellenborough, *R. v. Southampton*, 6 M. & S. 394; see also *R. v. Surrey*, 50 L. J. M. C. 10.

Delaying time for the publication of a rate has been treated by the courts as if done so designedly: *R. v. Dorsetshire*, 15 East, 200; *R. v. Sussex*, 15 East, 206; those cases are as to rates: *R. v. Kent*, 8 B. & C. as to a removal of a pauper; see also *R. v. Sussex*, 34 L. J. M. C. 69; *R. v. Yorkshire W. R.*, 4 M. & S. 327.

The *time* from which to date the notice of appeal is in all cases as from the first day of the *original* sessions, and not any adjournment thereof: see *ante*, p. 129, "Appeal."

Time for appeal under the Nuisance Removal Act, 1855, 18 & 19 Vict. c. 121, s. 22 (repealed by the Public Health Act, 1875), ran from the service of the notice of assessment on the premises assessed, and not from the time the amount

of the rate was fixed by the local authority : *R. v. Middleton*, 28 L. J. M. C. 41. As remarked by Blackburn, J., in *R. v. The Barnet Sanitary Authority*, 45 L. J. 105, 107, a rate may be made behind a man's back : see now the Public Health Act, 1875, s. 269, sub-s. 2.

Where, under the Municipal Act, 1882, any act is to be done or proceeding taken on a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a fast, humiliation, or thanksgiving day, such days will be excluded from the time, 45 & 46 Vict. c. 50, s. 230.

TOWNS IMPROVEMENT CLAUSES ACT, 1847.

10 & 11 Vict. c. 34.

An appeal is given by sec. 185 of the Towns Improvement Clauses Act, 1847, to any person who may think himself aggrieved by any rate on the ground of inequality, unfairness, or incorrectness in the valuation of any rateable property included therein, or in the amount assessed thereon ; he may at any time within one month after such rate is made appeal to the justices at any *special* sessions holden for the division within which the rateable property is situated, for the purpose of considering appeals against the poor rates. But no such appeal shall be entertained by such justices unless *seven* days' notice in writing of such appeal be given by the aggrieved party to the commissioners ; and the sessions shall hear and determine all objections to such rate on the grounds above stated, and of which notice had been given, but no other objection ; and their decision will be final unless the party impugning such decision, within fourteen days after the same is made, give notice in writing to the other party of his intention to appeal against such decision, stating in such notice the nature and grounds of such appeal ; and within five days after such notice enter into a recognizance before a justice with sufficient sureties to try such appeal at the next sessions and abide the order of the court.

Appeal
against
rate under
sec. 185 to
justices in
special
sessions.

No order is to be in force pending the appeal : sec. 188.

By sec. 186, any person aggrieved by any rate made under the authority of this or the special Act, or by any matters included in or omitted from the same, may, at any time within one month after the same is made, give notice of his intention to appeal to the next quarter sessions holden not less than fourteen days after such notice ; but no such appeal

Appeal
under sec.
186 from
special
sessions to
quarter
sessions.

shall be entertained at such quarter sessions unless fourteen days' notice in writing of such appeal, stating the nature and grounds thereof, be given by the aggrieved party to the commissioners; but no such appeal will prevent the issue of a distress for the rate.

The court may adjourn the hearing, and the decision will be final: sec. 187. Sec. 188 suspends the proceedings pending the appeal.

By sec. 189, the sessions, on appeal, will have the same power of amending and quashing rates and awarding costs as in appeals against poor rates.

Sec. 190 takes away the writ of *certiorari*, but see sec. 40, Summary Jurisdiction Act, 1879.

Appeal
clause
against
orders of
commis-
sioners to
quarter
sessions
under sec.
86.

With respect to works to be constructed by or subject to the approval of the commissioners (of which notice is to be given, sec. 84, and under sec. 85 the commissioners will hear objections in the presence of the inspector), it is enacted by sec. 86 that any person liable to pay or to contribute towards the expense of any of the works aforesaid, or otherwise aggrieved by any order of the commissioners relating thereto, may, at any time within seven days next after the making of any such order, give notice in writing to the commissioners that he intends to appeal against such order to the court of quarter sessions holden next after the expiration of ten days next after such notice; and along with such notice he shall give a statement in writing of the grounds of the appeal; and if within four days next after giving such notice the party enter into a recognizance before some justice, with two sufficient sureties, conditioned to try the appeal and abide the order of the court, and pay such costs as shall be awarded by the court, thereupon the work so appealed against shall not be begun until after the judgment of the court upon such appeal; and such court, upon due proof of such notice and recognizance having been given and entered into, shall hear and determine the matter of the appeal, and shall make such order thereon, either confirming, quashing, or varying the same, and award such costs to either of the parties as the court in its discretion thinks fit; provided always that the appellant shall not be heard in support of such appeal unless such notice and statement have been given and such recognizance entered into as aforesaid; nor on the hearing of such appeal shall he go into evidence of any other grounds of appeal than those set forth in such statement as aforesaid.

Offence by By sec. 105, if any nuisance, or the cause for the injurious

effects which the justices had ordered to be abated under sec. 104, be not discontinued or abated as ordered, the person whose business caused the nuisance will be subject to the penalty of not exceeding £5 for every day during which the nuisance continues or is unremedied; but when any person thinks himself aggrieved by such order, and shall, "according to the provisions of this or the special Act *appeal* against such order," such person will not be liable to discontinue or remedy the nuisance or cause of injurious effects, or pay any penalty until after five days after the hearing the appeal, unless the appeal should cease to be prosecuted.

It is suggested in Taylor on the Consolidated Acts that it is doubtful if there be an appeal under this sec., on the assumption that the special appeal clauses do not apply. There is, however, clearly the *right* of appeal given, and as to the form of procedure, see *R. v. Salop JJ.*, 50 L. J. M. C. 72, and remarks thereon under Tit., Summary Jurisdiction Acts (*supra*). What right of appeal on conviction.

TRADES-UNIONS.

Mr. Davis, in his work on Friendly Societies and Trade Unions (p. 177), speaks of trades unions as being associations closely connected with the prosperity and reverses of English commerce; and which, in their primitive form, were merely benefit societies, consisting of artisans engaged in particular trades, who combined together for the mutual assistance of persons employed in a similar manner to themselves. Such societies were familiar to the Anglo-Saxons, amongst whom they were called "guilds," signifying a fraternity (*a*).

The Trade Union Act, 1871, 34 & 35 Vict. c. 31, legalised the societies called trade unions (*b*).

Under the Act there are certain offences created, on the conviction for which the party aggrieved will have his right of appeal.

Under sec. 12, if any officer, member, or other person being or representing himself to be a member of a trade union registered under the Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person

(*a*) As to the modern objects of Trades Unions, and contracts in restraint of trade, see Mr. Davis' work.

(*b*) How far a Court of Equity will interfere between its members, see *Rigby v. Connal*, 42 L. T. 139.

whatsoever by false representation or imposition, obtain possession of any monies, securities, books, papers, or other effects of such trade union ; or, having the same in his possession, wilfully withhold or fraudulently misapply the same ; or, wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any part thereof:—the justices may, by a summary order, order all such monies, securities, &c., to be given up to the trade union ; or repayment of the amount applied improperly ; and payment, if the court thinks fit, of a further sum not exceeding £20, with costs not exceeding 20s. In default, the person convicted may be imprisoned for a time not exceeding three months, with or without hard labour.

Every trade union must be registered, and have a registered address ; and a trade union being in operation for seven days without having such office, such union and every officer thereof will *each* incur a penalty not exceeding £5 for every day during which it is so in operation, see sec. 15.

Notice of the situation of the registered office, and of any change therein, is to be given to the registrar and recorded by him ; and until such is done the trade union will not be deemed to have complied with the provisions of the Act, *ib.*

A general statement of the receipts, funds, effects, and expenditure of every trade union is to be transmitted to the registrar before the 1st of June in every year, and also a copy of the alteration in the rules and changes of officers during the year ; under a penalty of £5 for each offence, payable by the trade union and every officer of the trade union so failing, see. 16.

And every person wilfully making or ordering to be made any false entry in, or any omission from, the general statement, or in or from the return of copies of rules or alterations of rules will be liable to a penalty not exceeding £50 for each offence, *ib.* (a)

Under sec. 20 the party feeling aggrieved by any order or conviction made under the Act by a court of summary jurisdiction, may appeal therefrom subject to conditions and regulations. Similar to the conditions and regulations in sec. 33, sub-s. 5 of the Friendly Societies Act, 38 & 39 Viet. c. 60 (*ante*, p. 265). But with this exception, under sec. 20 of the Trade Union Act, sub-s. 5, the court of appeal *has* the

(a) Circulating false copies of rules with intent to mislead or defraud is a misdemeanour : sec. 18, Trade Union Act, 1871.

power given in the section to order costs to be paid by either party as the court may think just; but such *power* is omitted in the Friendly Societies Act; the appellant is, however, to enter into his recognizances "to pay costs *if awarded*," and which may be ordered under 11 & 12 Vict. c. 43, s. 27, *ante*, p. 203.

VOLUNTEER FORCE.

26 & 27 Vict. c. 65.

Under the Volunteer Act, 1863, 26 & 27 Vict. c. 65, s. 28 (*a*), any person who designedly makes away with, sells, pawns, wrongfully destroys, damages, loses, or wrongfully refuses or neglects to deliver up on demand anything issued to him as a volunteer: penalty, the value recoverable with costs; and for the offence of "designedly making away with, selling, pawning, or wrongfully destroying," as aforesaid, on the prosecution of the commanding officer, &c.: penalty, not exceeding £5.

Under sec. 29, any person who knowingly buys or takes in exchange from any volunteer, or any person acting on his behalf; or solicits or entices any volunteer to sell, or knowingly assists or acts for any volunteer in selling, or has in his possession or keeping without satisfactorily accounting for, any arms, clothing, or appointments (see sec. 49) being public property, or property of any volunteer corps, or administrative regiment, or any public stores, or ammunition issued for the use of any such regiment: penalty, on a first conviction, not exceeding £20; on a second and subsequent conviction, not exceeding £20 or less than £5, with or without imprisonment for any term not exceeding six months with or without hard labour.

By 32 & 33 Vict. c. 81, the words "buy" and "sell," and "selling," will include "take in pawn," "pawn," and "pawning," respectively.

The conviction is to be returned to the quarter sessions, and a certified copy thereof will be received as evidence: 26 & 27 Vict. c. 65, s. 29.

(*a*) As to "Naval Coast Volunteers" and Royal Naval Volunteers, see 22 & 23 Vict. c. 40. and Yeomanry Corps, 44 Geo. 3. c. 54, there is no appeal on a con-

viction; but under the Sum. Juris. Act, 1879, s. 19, the appeal is given on a sentence of imprisonment, and which the court has power to inflict.

Any person causing wilful injury to butts or targets belonging to a volunteer corps or administrative regiment : or who, without leave of the commanding officer, searches for bullets in or otherwise disturbs the soil forming such butt or target : penalty, not exceeding £5, on the prosecution of the commanding officer.

Under sec. 38 Bye-laws may be made for the regulation of the shooting and prevention of intrusion : a penalty not exceeding £5 may be imposed.

Under sec. 45, any person demanding or taking a toll in contravention, or making a false representation respecting himself or any other person, animal, or thing, with intent to obtain for himself or otherwise, or fraudulently obtains for himself or otherwise, any exemption under this section : penalty, not exceeding £5.

Appeal.

Section 48 gives the right of appeal where the sum adjudged on a summary conviction, inclusive of any costs, exceeds £5, or the imprisonment awarded exceeds one month (see the Summary Jurisdiction Act, 1879, sec. 19), and the party thinks himself aggrieved ; and on such appeal the following provisions will take effect :—

1. The appeal will be made to the next quarter sessions held not less than *twelve* days after the day of the conviction or adjudication :

2. The appellant will, within three days after the day of the conviction, and seven clear days at least before the sessions to which the appeal is to be made give to the complainant a notice in writing of the appeal, and of the ground thereof ;

3. The appellant may enter into recognizances with two sufficient sureties conditioned to try the appeal to appear personally at the sessions and abide the judgment of the court, and pay costs awarded ; or where a pecuniary penalty imposed, or the appeal is against an adjudication for the payment of money, the appellant may deposit with the clerk of the convicting justices such sum as *those* justices deem sufficient, together with the costs ;

4. On entering into the recognizance, the appellant may be liberated, if in custody ;

5. The court of quarter sessions are to hear and determine the appeal, and make such order thereon, with or without costs, as to the court seems fit ; and in case of the affirmation of the conviction, or dismissal of the appeal, shall adjudge the appellant to be punished according to the conviction,

and to pay such costs as are awarded, and if necessary issue process for enforcing the judgment ;

6. The court may order the penalty and costs to be paid out of any deposit made under sub-s. 3 ;

7. On the conviction being quashed, the proper officer will indorse on the conviction a memorandum that it has been so quashed ; and a copy of such conviction with the indorsement will be evidence that such conviction has been quashed.

See generally the previous remarks on the Summary Jurisdiction Act, 1879, *supra*, and the right of the appellant to *elect* to appeal under that Act. As to appeals in London, or the metropolitan police district, see 2 & 3 Vict. c. 71, s. 50 ; 2 & 3 Vict. c. xciv. s. 101.

WEIGHTS AND MEASURES ACT, 1878.

41 & 42 Vict. c. 49.

The Weights and Measures Act came into operation on January 1st, 1879, and provides for a uniform use of weights and measures throughout the kingdom ; consolidating the law, and repealing all previous statutes relating thereto : see the sixth schedule.

The central administration of the Act is in the Board of Trade : sec. 33. Local authorities.

The local administration is under the local authorities : sec. 40.

By the fourth schedule, for England, the county local authority will be the justices in quarter sessions ; for London, the Lord Mayor and Aldermen ; for a borough, the town council : sec. 40.

But by sec. 50, a council for a borough, not having a separate court of quarter sessions, is *not* the local authority unless they so resolve, and provide local standards and appoint inspectors. Upon the expiration of one month of their giving notice thereof, under seal, to the clerk of the peace of the county, they will be the local authority, and the county authority will cease to have jurisdiction in the borough. Where a council of such a borough had provided itself with local standards and appointed inspectors, prior to the 1st of January, 1879, that council continued to be the local authority.

Inspectors. The local standards will be duly verified from time to time, and produced by persons for that purpose : sec. 41, 42. Sec. 43 provides for the appointment of inspectors who may be suspended or dismissed, and who will under sec. 47 enter into recognizances to the Crown for the due performance of their duties : sec. 54.

Inspection of weights and measures. Officers of the rural police may be appointed inspectors : *R. v. Jarvis*, 3 E. & B. 640 ; 18 Jur. 1051.

Times and places will be fixed by the local authority for the inspection of all weights and measures. And the weight or measure will be stamped, and a certificate given of correctness.

Sec. 44 regulates the jurisdiction of the county inspector to act *for his own* district within a borough.

Every weight or measure so stamped may be legally used throughout the kingdom : sec. 45.

Sec. 48 gives inspectors full power under the written authority of a justice of the peace, at all reasonable times to inspect all weights and measures, scales, balances, steel yards, and weighing machines within his jurisdiction, and which are used for trade.

Offences and penalties. Any person refusing or neglecting to produce all weights, &c., in his possession, or on his premises ; or who refuses to permit the examination of the same by the justice or inspector, or otherwise obstructs or hinders them from acting under the section, will be liable to a penalty of £5 for the first offence, and £10 for a second : sec. 48.

An inspector acting in contravention of the Act, or without verifying a weight, &c., with the local standard ; or is guilty of any breach of duty, or misconducts himself in his office, will be liable to a penalty of £5 for each offence : sec. 49.

Every contract, bargain, sale, or dealing made in the kingdom shall be had and made according to one of the imperial weights or measures, and if not so made will be void.

Any person selling by any denomination of weight or measure, other than the imperial, will be liable to a penalty of 40s. for every such sale : sec. 19.

Every article sold by weight shall be sold by avoirdupois weight :

Except gold and silver, and articles made thereof ; also platinum, diamonds, and other precious metals, and stones which may be sold by ounce troy, or any decimal part thereof ; and drugs when sold by retail may be sold by apothecaries weight.

Every person acting in contravention of this section will be liable to a penalty of £5 : sec. 20.

Any person who prints, or any clerk of a market or other person who makes any return, price list, price current, or any journal or other paper containing any price list or price current, in which the denomination of weights and measures quoted or referred are of a greater or less weight or measure than the imperial, will be liable to a penalty of 10s. for every copy of every such return or journal, &c. : sec. 23.

Any person having in his possession for the use of trade a weight or measure which is false (*a*) or unjust will be liable to a fine of £5, and, in case of a second offence, £10, and the weight or measure will be forfeited : sec. 25.

Where any fraud is wilfully committed in using any weight or measure, the person committing such fraud will be liable to a fine of £5, and for a second offence £10, and the measure, &c., forfeited : sec. 26.

Any person wilfully and knowingly selling or making, or causing to be made or sold, any false or unjust weight, &c., will be liable to a fine of £10, or, in case of a second offence, £50 ; sec. 27.

Every measure and weight used for trade must have the verification stamp. Any person having in his possession for use for trade any measure or weight not so stamped, will be liable to a penalty not exceeding £5, and for a second offence £10, and forfeiture of such measures and weights. Any contract made thereon will be void : sec. 29.

Sec. 30 directs of what material the weights may be made ; a non-compliance with which will render the person offending liable to a penalty of £5 for the first, and £10 for the second offence.

The using an unstamped coin weight is liable to a fine of £50 : sec. 31.

The forging or counterfeiting any stamp used for stamping measures or weights since or before the 1st January, 1879, or wilfully increasing or diminishing a weight “ so stamped,” will be liable to a fine of £50 : sec. 32.

Any person who knowingly uses, sells, utters, disposes of, or exposes for sale any measure or weight with such forged or counterfeit stamp thereon ; or a weight so increased or

(*a*) This clause (25th) provides against the decision, *Booth v. Shadgett*, L. R. 8 Q. B. 352 ; 42 L. J. M. C. 98 ; 29 L. T. 30. It

will be an offence now to have a weight apparently in the seller's own favour.

diminished, will be liable to a fine of £10 ; and all such measures and weights will be forfeited : sec. 32.

No second penalty shall be inflicted, unless the second offence be committed after a conviction within five years previously for an offence under the same section : sec. 58.

When any weight, measure, scale, balance, steelyard, or weighing-machine is found in the possession of any person carrying on trade within the meaning of the Act ; or on the premises of any person which, whether a building, or in the open air, whether open or enclosed, are used for trade within the meaning of the Act, such person shall be deemed for the purposes of the Act, until the contrary be proved, to have had them in his possession for use for trade : sec. 59.

By sec. 56, all offences under the Act may be prosecuted before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Appeal.

And by sec. 60, any person aggrieved by any conviction or order of such court, may appeal therefrom to the quarter sessions having jurisdiction where the decision was given.

Any person who feels himself aggrieved by a conviction or order of a court of summary jurisdiction under the Act, may appeal therefrom, subject (in England) to the conditions specified in (sec. 60) the Act. But the appellant may elect to appeal under the Summary Jurisdiction Act, 1879. See Tit., Summary Jurisdiction Acts (*supra*).

In the preliminary requirements under the two statutes there is some material difference.

By the first sub-section of the Weights and Measures Act, the next practicable sessions to which the appeal is to be made is the one to be "holden not less than twenty-one days" after the day of the decision appealed on : under the Summary Jurisdiction Act it is fifteen days. Should the time have passed by for appealing under the Summary Jurisdiction Act, there would remain *six* days for appealing under the Weights and Measures Act, as before set out.

By sub-s. 2, Weights and Measures Act, the time for giving notice of appeal is ten days *after* the day on which the decision appealed on was given ; and such notice is to be served on the other party, and *the clerk* of the court of summary jurisdiction. Under the Summary Jurisdiction Act seven days only will be allowed.

WRECK.

Any person being in the possession of any goods, merchandise, or articles of any kind belonging to any ship or vessel in distress, or wrecked, stranded, or cast ashore, or being on the premises of any person with his knowledge, and such person shall not satisfy a justice (on summons) that he came lawfully by the same; penalty, either imprisonment with or without hard labour for not exceeding six calendar months, or else forfeit over and above the value of the goods, &c., not exceeding £20 (secs. 65, 66); in default of payment, imprisonment with or without hard labour for not exceeding two calendar months; see scale in Summary Jurisdiction Act, 1879, s. 5 (*supra*); see *ante*, Merchant Shipping Act, secs. 441, 442, 443, 447, 450, 478, *ante*, pp. 372-3.

Any person offering or exposing for sale any goods, &c., unlawfully taken, or reasonably suspected so to have been taken from any ship or vessel in distress, or wrecked, stranded, or cast on shore, see *Legge v. Bond*, 1 C. B. 92; 14 L. J. C. P. 138; and who (on summons) before a justice cannot satisfy him he came lawfully by such goods, &c.; penalty, the same as under the preceding section: sec. 66.

Any persons convicted for an offence concerning "wrecks" by a court of summary jurisdiction, will have their right of appeal to the quarter sessions, as provided by the Larceny Act, 1861, s. 110, *ante*, p. 197. They will also have their election, as authorised by the 32nd section of the Summary Jurisdiction Act, 1879, to appeal under the "rules and regulations" contained in the 31st section of that Act: see *R. v. Montgomeryshire*, *supra*, Summary Jurisdiction Acts.

Attention may, however, be again directed, as regards appeals generally under all "past Acts," (that is, those Acts passed prior to the Summary Jurisdiction Act, 1879,) to the importance for appellants to watch carefully the very varied "rules and regulations" to be followed in the appellate procedure under each respective appeal clause in the several Acts giving a right of appeal, and each of which will still remain in full force, notwithstanding the Act of 1879. And reference may likewise be pointed to the previous remarks made on the general effect of that Act regarding appeals; and, in particular, to the result of the authorities, *R. v. Salop*, or *R. v. Shropshire*, and *R. v. Montgomeryshire*, as they are commented on under the title, "The Summary Jurisdiction Acts."



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